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# The American Political Science Review

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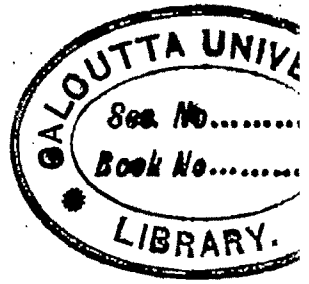
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# The American Political Science Review

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## THE CONTROL OF FOREIGN RELATIONS

QUINCY WRIGHT

*University of Minnesota*

"A treaty entering the Senate is like a bull going into the arena; no one can say just how or when the final blow will fall—but one thing is certain—it will never leave the arena alive."<sup>1</sup> When John Hay put this in his diary he had been secretary of state for six years. During this period he had seen seventeen treaties borne from the Senate, lifeless or so mutilated by amendments that they could not survive. We can pardon the harassed secretary's earlier statement. "The fact that a treaty gives to this country a great, lasting advantage, seems to weigh nothing whatever in the minds of about half the Senators. Personal interest, personal spites, and a contingent chance of petty political advantage are the only motives that cut any ice at present."<sup>2</sup>

It is, however, with the objective aspect of Secretary Hay's statement that we are primarily concerned. Statesmen, as others, may occasionally express impatience, but if the practical function of the Senate in treaty making is that of the matador at a bull fight, there are more serious grounds for concern. If its duties resemble those of picadors or banderilleros, the matter is serious enough, and of its goading tactics we have early evi-

<sup>1</sup> Thayer, *The Life and Letters of John Hay*, II, p. 393.

<sup>2</sup> *Ibid.*, II, p. 274.

dence. Thus, John Quincy Adams writes in his diary: "Mr. Crawford told twice over the story of President Washington's having at an early period of his Administration gone to the Senate with a project of a treaty to be negotiated, and been present at their deliberations upon it. They debated it and proposed alterations, so that when Washington left the Senate-chamber he said he would be damned if he ever went there again. And ever since that time treaties have been negotiated by the Executive *before* submitting them to the consideration of the Senate."<sup>3</sup> Let us not leave the incident without hearing the picador's side, as recorded in Senator Maclay's journal on August 21, 1789. "I cannot now be mistaken. The President wishes to tread on the necks of the Senate. . . . He wishes us to see with the eyes and hear with the ears of his Secretary only. The Secretary to advance the premises, the President to draw the conclusions, and to bear down our deliberations with his personal authority and presence. Form only will be left to us."<sup>4</sup>

However, treaties have occasionally been rescued from senatorial banderilleros. President Roosevelt reveals the method in his autobiography. "The constitution did not explicitly give me power to bring about the necessary agreement with Santo Domingo. But the Constitution did not forbid my doing what I did. I put the agreement into effect, and I continued its execution for two years before the Senate acted: and I would have continued it until the end of my term, if necessary, without any action by Congress. But it was far preferable that there should be action by Congress, so that we might be proceeding under a treaty which was the law of the land and not merely by a direction of the Chief Executive which would lapse when that particular Executive left office. I therefore did my best to get the Senate to ratify what I had done. There was a good deal of difficulty about it. . . . Enough Republicans were absent to prevent the securing of a two-thirds vote for the treaty, and the Senate adjourned without any action at all, and with the feeling of entire self satisfaction at having left the country in the position

<sup>3</sup> J. Q. Adams, *Memoirs*, VI, p. 427. As to the last sentence see notes 24 to 26.

<sup>4</sup> *Journal of William Maclay* (N. Y. 1890), p. 131.

of assuming a responsibility and then failing to fulfil it. Apparently the Senators in question felt that in some way they had upheld their dignity. All that they had really done was to shirk their duty. Somebody had to do that duty, and accordingly I did it. I went ahead and administered the proposed treaty anyhow, considering it as a simple agreement on the part of the Executive which would be converted into a treaty whenever the Senate acted. After a couple of years the Senate did act, having previously made some utterly unimportant changes which I ratified and persuaded Santo Domingo to ratify.”<sup>6</sup>

Such incidents suggest that our recent difficulties are not wholly due to personalities. Institutions must be partly to blame. Indeed, Viscount Grey, in his letter to the *Times* of January 31, 1920, said that the American Constitution “not only makes possible, but under certain conditions renders inevitable conflict between the executive and the legislature.”

American commentators have noticed this situation. Frequently they have urged reform, usually in the direction of the British cabinet system, but their attention has been centered upon domestic affairs. It is an extraordinary fact, that with respect to the control of foreign affairs, the reverse is true; British writers have looked hopefully to the United States as a model for reform. Thus, in his *American Commonwealth*, Lord Bryce says: “The day may come when in England the question of limiting the present all but unlimited discretion of the executive in foreign affairs will have to be dealt with, and the example of the American Senate will then deserve and receive careful study.”<sup>7</sup> This opinion has been acted upon, and features of the American system have been endorsed by the British Union for Democratic Control of Foreign Relations founded in 1914.<sup>7</sup> More recently British reformers have doubtless looked elsewhere for models.

<sup>6</sup> Roosevelt, *Autobiography*, pp. 551-552.

<sup>7</sup> Bryce, *The American Commonwealth* (2nd ed.), I, p. 104.

<sup>7</sup> “The Morrow of the War,” first pamphlet issued by the Union of Democratic Control, 1914, printed in Ponsonby, *Democracy and Diplomacy* (London, 1915), p. 21.

Is our system for conducting foreign relations in need of revision? What is our system? What are the essentials of a satisfactory system for controlling foreign relations? Can our system be made to conform more closely to that standard?

## I

The constitutional fathers were convinced of Montesquieu's dogma of the separation of powers.<sup>8</sup> They distributed the powers of government among independent legislative, executive and judicial departments. Where should they place the foreign-relations power? Some wanted to give it to the President,<sup>9</sup> some to Congress.<sup>10</sup> They compromised, and gave the power to receive foreign ministers and to act as commander-in-chief of the army and navy to the President, the power to declare war to Congress, and the power to make treaties and to appoint foreign ministers to the President acting with the advice and consent of the Senate. The terms of the Constitution and the debates of the convention suggest that in foreign affairs the President is authorized to initiate and control relations, checked by the possibility of senatorial or congressional veto.

Constitutional terms, however, must be read in the light of subsequent practice. In the 130 years of our history, where has the control of foreign relations actually been lodged? Let us consider the acts involved under the headings: (1) recognition of international conditions; (2) treaty making; (3) war making.

(1) The recognition of new states or governments has been by the President.<sup>11</sup> Washington never doubted his constitutional authority to receive Citizen Genêt, thereby according status to

<sup>8</sup> Montesquieu, *L'Esprit des lois*, Vol. I, bk. xi, ch. 6.

<sup>9</sup> See remarks by Hamilton, Gouverneur Morris and Mercer in Farrand, *Records of the Federal Convention*, I, p. 292; II, pp. 104, 297. See also Hamilton, "Pacifcus" letter, June 23, 1793, printed in Corwin, *The President's Control of Foreign Relations* (1917), p. 8.

<sup>10</sup> See remarks by James Wilson in Farrand, *op. cit.*, II, 538, and Madison, "Helvidius" letter in answer to "Pacifcus" August 24, 1793, printed in Corwin, *op. cit.* p. 16.

<sup>11</sup> See Moore, *Digest of International Law*, I, pp. 243-244; Corwin, *op. cit.* p. 71; Willoughby, *Constitutional Law*, I, p. 461.

the French revolutionary government of 1793.<sup>12</sup> When Roosevelt received the emissary of the embryo republic of Panama a hundred and ten years later no one could question his constitutional authority.<sup>13</sup> Congress had thought of accelerating the dissolution of the Spanish empire in South America by recognition of the new republic in 1818, but constitutional experts insisted that the power belonged to the President and Congress acquiesced.<sup>14</sup>

Recognition of the limits of American territory belongs normally to the treaty power, but the President alone has acquired small uninhabited islands by declaration.<sup>15</sup> The acquisition of Texas and Hawaii by joint resolution of Congress in 1845 and 1898 are the sole cases of legislative initiative in this matter, and commentators have had difficulty in locating the constitutional authority for these assumptions of power.<sup>16</sup>

When President Washington proclaimed neutrality on April 21, 1793, upon the outbreak of the French revolutionary wars, Jefferson and Madison thought that by thus recognizing peace, when the French alliance treaty of 1778 seemed to demand war, he had exceeded his constitutional powers. But this precedent, ably defended by Hamilton, has stood.<sup>17</sup> Presidents have repeatedly, on their own authority, recognized neutrality upon the outbreak of foreign war.<sup>18</sup>

<sup>12</sup> Moore, *Digest*, I, pp. 121-122; V, pp. 589-590.

<sup>13</sup> Richardson, *Messages and Papers of the Presidents*, X, p. 582; Moore, *Digest*, III, p. 55.

<sup>14</sup> J. Q. Adams, *Memoirs*, IV, pp. 205-206; Corwin, *op. cit.* p. 73.

<sup>15</sup> Guano islands have been acquired by the President under authority of an act of Congress (Jones vs. U. S., 137 U. S. 202 (1890), Moore, *Digest*, I, p. 558); Horseshoe Reef in Lake Erie was acquired by the President through executive agreement with Great Britain and Midway and Wake Islands in the Pacific have been annexed by the President as a result of discovery and occupation. Moore, *Digest*, I, pp. 554-555.

<sup>16</sup> The power of Congress to admit new states to the union has been used as a justification for annexation of Texas. This use of this clause, however, was not intended by the constitutional fathers (Willoughby, *op. cit.* pp. 325-338) and could hardly apply to Hawaii. See *ibid.* ch. 22.

<sup>17</sup> See "Pacificus" and "Helvidius" letters by Hamilton and Madison, called forth by this incident, printed in Corwin, *op. cit.* pp. 5-30 and also, Moore, *Digest*, V, pp. 591-592.

<sup>18</sup> The *Divina Pastora*, 4 Wheat. 52; Moore, *Digest*, I, pp. 164 *et seq.* and 247.

So also with the recognition of peace following a war. The termination of war is normally a function of the treaty power. Though war may be begun by one party, it takes two to end it, unless, indeed, there is complete conquest and absorption of one belligerent as in the case of our Civil War.<sup>19</sup> However, the consent of the contesting states, necessary to end a war, need not be evidenced by express agreement. Tacit consent may be inferred from continued suspension of active hostilities, and in the United States the President has decided when that inference is proper, both in wars between two foreign states and in civil war within the United States. Thus in 1868, after the war between Spain and Chile had been suspended for two years, Secretary of State Seward informed the Spanish minister that the United States might be obliged to decide whether peace existed,<sup>20</sup> and on April 2 and August 20, 1866, President Johnson issued proclamations declaring the Civil War at an end in specified areas.<sup>21</sup> These were subsequently held by the Supreme Court formally to terminate the war.<sup>22</sup>

It has been proposed that Congress terminate the war with Germany and Austria by repeal of the war resolutions of April 6, and December 17, 1917.<sup>23</sup> In support of such a measure it has been argued that whatever Congress may make it may unmake. This, of course, neglects the distinction between general laws and acts or resolutions creating a status. Congress, in general, can not repeal resolutions of the latter character, of which those ad-

<sup>19</sup> "I have yet to learn that a war in which the belligerents, as was the case with the late civil war, are persistent and determined, can be said to have closed until peace is conclusively established, either by treaty when the war is foreign, or when civil by proclamation of the termination of hostilities on one side and the acceptance of such proclamation on the other. The surrender of the main armies of one of the belligerents does not of itself work such termination." Mr. Bayard, secretary of state, to Mr. Muruaga, Spanish minister, December 3, 1886, U. S. For. Rel., 1887, pp. 1015; Moore, *Digest*, VII, p. 337.

<sup>20</sup> Mr. Seward, secretary of state to Mr. Goñi, Spanish minister, July 22, 1868, U. S. *Diplomatic Correspondence*, 1868, Vol. II, pp. 32, 34; Moore, *Digest*, VII, p. 337.

<sup>21</sup> 14 stat. 811, 13 stat. 814.

<sup>22</sup> The Protector, 12 Wallace, 700.

<sup>23</sup> See note by C. P. Anderson, *American Journal International Law*, Vol. 14, p. 384. Text of the resolution, *ibid.*, p. 419, and legislative history, *ibid.*, p. 438.



mitting new states to the union, or conferring citizenship upon nationals are examples. However, whatever might be the effect of such a resolution in municipal law, and doubtless the courts would follow it as the decision of a "political question," it clearly could have international effect, only so far as expressly or tacitly accepted by the enemy powers.

As we have seen, the President, rather than Congress is the usual authority for recognizing facts connected with foreign relations, and by analogy it would seem that reception of a diplomatic officer from a former enemy would be the proper constitutional method for recognizing that a war had terminated by mutual cessation of hostilities. Doubtless in so delicate a matter the President ought to gain the approval of Congress, before acting, as he has sometimes done in the recognition of new states. It is believed that a resolution, such as that proposed by Senator Knox, would, if signed by the President or passed over his veto, terminate the war so far as domestic law is concerned, but under international law, it would not be effective, until the President, acting under it, had performed some formal act, evidencing mutual consent by the two governments, such as the reception of a diplomatic officer from the former enemy.

(2) The power to make treaties belongs to the President acting with the advice and consent of two-thirds of the Senate, but since Washington's administration the President has seldom sought the advice of the Senate prior to or during negotiations. He has negotiated and signed treaties independently and submitted the completed work to the Senate for consent to ratification.<sup>24</sup> In 1830 President Jackson sought the advice of the Senate on an Indian treaty prior to signature, but in doing so apologized "for departing from a long and for many years an unbroken usage in similar cases," a departure he thought justified by distinctive considerations applicable to Indian treaties.<sup>25</sup> In only ten later cases has such prior advice been sought, though informal

<sup>24</sup> Crandall, *Treaties, their Making and Enforcement* (N. Y., 1916), p. 70; Willoughby, *op. cit.* p. 458.

<sup>25</sup> Richardson, *op. cit.* Vol. II, p. 478.

conferences with individual senators or with the Senate committee on foreign relations have been frequent.<sup>26</sup>

The Senate under the Constitution must give its advice and consent to the appointment of officers of the United States and has asserted that all persons authorized to negotiate treaties are thus included. However, the President has often negotiated treaties in person or through agents appointed by himself alone. The practice began with Washington's commission to John Paul Jones to treat with Algiers; was followed in Nicholas Trist's mission, resulting in the treaty of Guadalupe Hidalgo ending the Mexican war; in Perry's famous mission to Japan in 1852; in the missions which concluded the treaty of peace with Spain in 1898; the Hague Conventions of 1899 and 1907; and the Algeciras General Act of 1906. A Senate report of 1887 stated that 438 special agents had been appointed by the President without consent of the Senate, and the majority report of the Senate in 1893, upon Blount's mission to Hawaii, stated: "Precedents show that the Senate of the United States, though in session, need not be consulted as to the appointment of such agents."<sup>27</sup>

The Senate may, however, refuse consent to ratification of treaties as it has done in 17 of about 650 negotiated treaties.<sup>28</sup> Among the more important treaties thus vetoed may be mentioned commercial and reciprocity treaties with Switzerland, 1835; with the German Zollverein, 1844; with Great Britain for Canada in settlement of the fisheries question, 1888; and the Kasson reciprocity treaties of 1899; annexation treaties with Texas, 1844; Hawaii, 1855; San Domingo, 1869; and Denmark for the Virgin Islands, 1868; arbitration and claims treaties including the Johnson-Clarendon treaty for settlement of the Alabama claims, 1868; and the Olney-Pauncefote general arbitration treaty with Great Britain, 1897. It is to be noticed that in most

<sup>26</sup> Lodge, "The Treaty-making Power," *Scribner's*, January 1902; Crandall, *op. cit.* pp. 70-72.

<sup>27</sup> Sen. Doc. No. 231, 56th Cong., 2nd Sess., viii, 332 *et seq.*; Sen. Rep. No. 227, 53rd Cong., 2nd sess., p. xxv; Corwin, *op. cit.* p. 64; Crandall, *op. cit.* p. 77; Moore, *Digest*, IV, 452-457; Foster, *The Practice of Diplomacy*, pp. 199-203; *American Political Science Review*, Vol. 10, p. 481 (1916):

<sup>28</sup> Crandall, *op. cit.* p. 82.

of these cases, the end sought was eventually achieved, though in the matter of annexing Hawaii and the Virgin Islands, and in the settlement of the Canadian fisheries question, not until many years later.

The Senate's right to qualify its consent to ratification by reservations, amendments and interpretations was established through a reservation to the Jay treaty of 1794 and has been exercised in about seventy cases.<sup>29</sup> In fifteen of these the President has objected to the Senate conditions and refused to ratify.<sup>30</sup> Among the number may be mentioned the Roosevelt and Taft arbitration treaties of 1904 and 1911. There seems to be no doubt but that the final act of ratification belongs to the President, and he may withdraw a treaty from the Senate at any time or refuse to ratify even after the Senate has consented to the treaty without qualification.<sup>31</sup> The other party to the treaty may refuse to accept Senate amendments or reservations in which case the treaty fails.<sup>32</sup> Thus, in 1803, after Senate alteration, Great Britain rejected a boundary settlement treaty; in 1824, a slave trade convention; and in 1900, the first Hay-Pauncefote Canal treaty.

The claim, occasionally asserted by the House of Representatives, of a right to participate in treaty making has not been sustained in practice. It is true that action by Congress may be necessary to execute a treaty, as when an appropriation is necessary; but in such a case, as President Washington explained in his message on the Jay treaty in 1796, Congress is under a moral obligation to act.<sup>33</sup>

<sup>29</sup> Lodge, *op. cit.*; Crandall, *op. cit.* pp. 79-81.

<sup>30</sup> Crandall, *op. cit.* p. 97-99; Taft, *Our Chief Magistrate and his Powers*, p. 106.

<sup>31</sup> Shepherd vs. Insurance Co., 40 Fed. 341, 347; Willoughby, *op. cit.* p. 466; Crandall, *op. cit.* pp. 81, 94, 97; Taft, *op. cit.* p. 106; Black, *Handbook of American Constitutional Law*, p. 124; Foster, *op. cit.* p. 274; Senator Spooner, quoted in Corwin, *op. cit.* p. 175.

<sup>32</sup> Moore, *Digest*, III, p. 212, V, pp. 199-201; Willoughby, *op. cit.* p. 464.

<sup>33</sup> Richardson, *op. cit.* I, p. 195; Moore, *Digest*, V, p. 225; Dana, note to Wheaton, *International Law*, sec. 543, note 250; Willoughby, *op. cit.* pp. 515-517. See also Roosevelt, "Message on Cuban reciprocity treaty," Richardson, *op. cit.* X, p. 561; Wright, "Treaties and the Constitutional Separation of Powers in the United States," *American Journal International Law*, Vol. 12, p. 82 (Jan. 1918).

Though formal treaties must gain the positive consent of the Senate, less formal agreements may be made by the President alone.<sup>34</sup> Of this character were the preliminary peace protocol with Spain of 1898, the Boxer indemnity agreement of 1900, the executive agreement under which President Roosevelt authorized the administration of San Domingan customs houses in 1904, and the preliminaries of peace and the armistice with Germany of November 5 and 11, 1918. Commitments to permanent policies have also been made under the sole authority of the President. Such were the exchanges of notes establishing the Hay open door policy in 1900, the Root-Takahira and Lansing-Ishii agreements for a far eastern policy in 1908 and 1917.

The termination of a treaty is normally a subject for negotiation between the signatory powers and is brought about by conclusion of a new treaty. Treaties, however, often provide for denunciation by one party on giving reasonable notice, usually one year. The question has arisen as to what authority in the United States may give this notice. A Senate report in 1856<sup>35</sup> held the treaty-making power competent, and denunciation of the Danish treaty was authorized in that year by the President acting with the Senate. President Taft however, denounced the Russian treaty of 1832 in 1911 on his own responsibility,<sup>36</sup> and on other occasions denunciation has been authorized by act of Congress. In 1879 President Hayes vetoed a resolution directing him to modify the Burlingame treaty with China, distinguishing such action from a denunciation of the treaty according to its own terms. "The power of modifying an existing treaty," he said, "whether by adding or striking out provisions, is a part of the treaty-making power under the Constitution, and its exercise is not competent for Congress."<sup>37</sup> President Wilson, simi-

<sup>34</sup> Willoughby, *op. cit.* pp. 467-479; Crandall, *op. cit.* pp. 102-117; Moore, *Digest*, V, 210-218; *Political Science Quarterly*, Vol. 20, p. 385 (1905).

<sup>35</sup> Sen. Rep. No. 97, 34th Cong., 1st sess.

<sup>36</sup> Taft, *op. cit.* p. 117; Crandall, *op. cit.* p. 462; Willoughby, *op. cit.* p. 518.

<sup>37</sup> Richardson, *op. cit.* VII, p. 519; Crandall, *op. cit.* p. 461. President Lincoln refused to carry out a resolution of Congress of February 9, 1865, which he himself had signed, which "adopted and ratified" notice already given for termination of the Great Lakes disarmament treaty of 1817. He withdrew the

larly, has refused to act in accordance with a provision of the Jones Merchant Marine Act of June 5, 1920, directing him to terminate treaty clauses which would prevent discrimination in favor of American vessels.

In spite of the incapacity of Congress to direct the President in the modification of treaties, Congress may impair or annul treaties by acts or resolutions which are effective as municipal law, though they do not relieve the United States of International responsibility. Thus the Chinese exclusion act of 1888 was held valid by the Supreme Court although it conflicted with certain treaty provisions,<sup>38</sup> and a resolution of 1798 was held to terminate the existing French treaties.<sup>39</sup> The doctrine of constitutional law has been that treaties and acts of Congress are equally the "supreme law of the land" and in case of conflict the more recent prevails.<sup>40</sup> Under international law, however, the obligation of a treaty continues until the instrument is terminated by mutual consent or denounced as provided in its own terms.<sup>41</sup>

Practice seems to sanction independent initial negotiation and denunciation of treaties by the President. The power of the Senate is confined to a qualified or unqualified veto of formal treaties; and that of Congress is limited to their impairment or termination as municipal law.

(3) The power to declare war is vested in Congress, but the President may so conduct negotiations as to make war inevitable, as did President Polk in 1846. He may, as commander-in-chief of the army and navy, and in pursuance of his duty "to take care that the laws be faithfully executed," employ forces abroad to protect the rights of American citizens, as was done by President Pierce in the case of Martin Koszta, 1856, and by President

notice and the disarmament treaty remained and still remains in force. House Doc. No. 471, 56th Cong., 1st. Sess., pp. 32-34; Crandall, *op. cit.* p. 462. Although the President is ordinarily under a constitutional obligation to carry out all acts and resolutions of Congress passed by proper constitutional process, this is not true of those directing him in foreign affairs. Crandall, *op. cit.* p. 74.

<sup>38</sup> Chinese Exclusion cases, 130 U. S. 581 (1889). See also Moore, *Digest*, V, pp. 364-370.

<sup>39</sup> Moore, *Digest*, pp. 356-359.

<sup>40</sup> Willoughby, *op. cit.* pp. 484-488.

<sup>41</sup> *Ibid.* pp. 513-515.

McKinley in the Boxer rebellion of 1900.<sup>42</sup> He may also employ the forces to execute treaties, as was done by President Roosevelt in restoring order in Cuba in 1906 as required by the Cuban treaty of 1903,<sup>43</sup> and for defense. Thus Jefferson, the man of peace, opened his administration by a defensive war against Tripoli which was not sanctioned by Congress until after the principal engagement.<sup>44</sup>

The President makes war subject to congressional approval. He decides independently when it is proper to employ the forces in measures short of war, subject always to the power of Congress to withhold supplies. He terminates war, subject, unless there is complete conquest, or protracted suspension of hostilities, to approval by two-thirds of the Senate.<sup>45</sup>

In 1906, Democratic senators, led by Senator Bacon of Georgia, disapproved of President Roosevelt's participation, without consulting the Senate, in the Algeciras conference on Morocco. "The Constitution," said Senator Spooner of Wisconsin, defending the President, "vests the power of negotiation and the various phases—and they are multifarious—of the conduct of foreign relations exclusively in the President. And . . . he does not exercise that constitutional power, nor can he be made to do it, under the tutelage or guardianship of the Senate or of the House or of the Senate and House combined."<sup>46</sup> Presidents themselves have displayed no less jealousy in guarding their prerogative in foreign negotiations. "Sympathizing as I do," wrote President Grant as he vetoed a congressional resolution in response to Argentinian congratulations upon our centennial exposition, "in the spirit of courtesy and friendly recognition which has prompted the passage of these resolutions, I cannot escape the conviction that their adoption has inadvertently

<sup>42</sup> In re Neagle, 135 U. S. 1 (1890); Wright, *American Journal International Law*, Vol. 12, pp. 77; Moore, *Digest*, VII, p. 112 *et seq.*, Borchard, *Diplomatic Protection of Citizens Abroad* (N. Y., 1915), p. 452.

<sup>43</sup> Taft, *op. cit.* pp. 85, 87.

<sup>44</sup> Richardson, *op. cit.*, I, p. 326.

<sup>45</sup> *Supra*, notes 20-22.

<sup>46</sup> *Congressional Record*, Vol. 40, p. 1417, quoted in Corwin, *op. cit.* p. 171; Reinsch, *Readings in American Federal Government*, p. 82.

involved the exercise of a power which infringes upon the constitutional rights of the executive."<sup>47</sup> Perhaps the language of these statements is extreme. Our Constitution recognizes no "mysteries of state" excluded from congressional examination. The constitutional powers of the Senate and Congress justify them in requesting information and exercising a very real check on presidential foreign policies. Yet practice in recognition, treaty making and war making accords to the President the initiative, and much independence in carrying out, foreign policies.

Viewing our system as it is, we must conceive of the foreign-relations power as a distinct department of the government vested in the President, restrained by senatorial or congressional veto. It is the reverse of the legislative power in which Congress initiates and enacts, subject to a limited presidential veto. It also differs from the executive power where the President acts independently, but within narrowly defined statutes of Congress.

## II

Two things seem to be needed in an institution designed to conduct foreign relations with success—concentration, or the ability to act rapidly and finally in an emergency; and popular control to give assurance that permanent obligations will accord with the interests of the nation. The subordination of national interests to dynastic and personal ends, prominent in sixteenth and seventeenth century diplomacy, showed the vice of an irresponsible concentration of power. The natural remedy seems to be parliamentary participation in treaty making and war making, and this has in fact been provided for in most continental European constitutions during the nineteenth and twentieth centuries.<sup>48</sup> In Great Britain alone, the Crown preserves its ancient prerogative in these matters, and although in practice

<sup>47</sup> Richardson, *op. cit.*, VII, p. 431, quoted in Corwin, *op. cit.* p. 44.

<sup>48</sup> See Myers, "Legislatures and Foreign Relations," *American Political Science Review*, Vol. 11, p. 643 *et seq.* (Nov. 1917), and British report on treatment of International Questions in Foreign Governments, Parl. Pap., Misc. No. 5 (1912), Cd. 6102, printed in appendix 2, Ponsonby, *Democracy and Diplomacy*, p. 128 *et seq.*

Parliament is sometimes consulted before ratification of important treaties, Lord Bryce and others have urged a more certain method of popular control, suggesting study of the American process of Senate participation.<sup>49</sup> But why labor the point? Democracy is convinced of the merits of democratic diplomacy. There is greater need to emphasize the importance of concentration.

This need of concentration of power for the successful conduct of foreign affairs was dwelt upon in the works of John Locke,<sup>50</sup> Montesquieu,<sup>51</sup> and Blackstone,<sup>52</sup> the political bibles of the con-

<sup>49</sup> *Supra*, notes 6, 7. For relations of Crown and Parliament in treaty making in Great Britain, see Anson, *Law and Custom of the Constitution* (3rd ed.), II, pt. II, p. 103. *et seq.*

<sup>50</sup> "These two powers, executive and federative (foreign relations), though they be really distinct in themselves, yet one comprehending the execution of the municipal laws, of the society within itself, upon all that are parts of it; the other the management of the security and interest of the public without, with all those that it may receive benefit or damage from; yet they are always almost united. And though this federative power in the well or ill management of it be of great moment to the commonwealth, yet it is much less capable to be directed by antecedent, standing, positive laws, than the executive; and so must necessarily be left to the prudence and wisdom of those whose hands it is in, to be managed for the public good; for the laws that concern subjects one amongst another, being to direct their actions, may well enough precede them. But what is to be done in reference to foreigners, depending much upon their actions, and the variation of designs, and interests, must be left in great part to the prudence of those who have this power committed to them, to be managed by the best of their skill, for the advantage of the commonwealth," Locke, *Two Treatises of Government*, sec. 147, *Works* (ed. 1801), V, p. 425.

<sup>51</sup> "By the [executive power, the prince or magistrate] makes peace or war, sends or receives embassies; establishes the public security, and provides against invasions. . . . The executive power ought to be in the hands of a monarch; because this branch of government, which has always need of expedition, is better administered by one than by many: Whereas, whatever depends on the legislative power, is oftentimes better regulated by many than by a single person. But if there was no monarch, and the executive power was committed to a certain number of persons selected from the legislative body, there would be an end of liberty; by reason the two powers would be united, as the same persons would actually sometimes have, and would moreover always be able to have, a share in both." Montesquieu, *L'Esprit des lois*, I, bk. XI, ch. 6.

<sup>52</sup> "With regard to foreign concerns, the king is the delegate or representative of his people. It is impossible that the individuals of a state, in their collective capacity, can transact the affairs of that state with another community equally numerous as themselves. Unanimity must be wanting to their measures, and



stitutional fathers. It was emphasized by many speakers in the Federal convention,<sup>53</sup> by the authors of the *Federalist*,<sup>54</sup> and by President Washington in his message on the Jay treaty.<sup>55</sup> The

strength to the execution of their counsels. In the king, therefore, as in a centre, all the rays of his people are united, and form by that union a consistency, splendor, and power, that make him feared and respected by foreign potentates; who would scruple to enter into any engagement that must afterwards be revised and ratified by a popular assembly. What is done by the royal authority, with regard to foreign powers, is the act of the whole nation; what is done without the king's concurrence, is the act only of private men." Blackstone, *Commentaries*, I, p. 252.

<sup>53</sup> See remarks by Hamilton and Gouverneur Morris, Farrand, *op. cit.*, I, pp. 290, 513.

<sup>54</sup> "It seldom happens in the negotiation of treaties, of whatever nature, but that perfect secrecy and immediate dispatch are sometimes requisites. There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. These apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular Assembly. The convention have done well, therefore, in so disposing of the power of making treaties that although the President must, in forming them act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest.

"They who have turned their attention to the affairs of men must have perceived that there are tides in them; tides very irregular in their duration, strength, and direction, and seldom found to run twice exactly in the same manner or measure. To discern and to profit by these tides in national affairs is the business of those who preside over them; and they who have had much experience on this head inform us that there frequently are occasions when days, nay, even when hours, are precious. . . . So often and so essentially have we heretofore suffered from the want of secrecy and dispatch that the Constitution would have been inexcusably defective if no attention had been paid to those objects. Those matters which in negotiations usually require the most secrecy and the most dispatch are those preparatory and auxiliary measures which are not otherwise important in a national view than as they tend to facilitate the attainment of the objects of negotiation. For these the President will find no difficulty to provide; and should any circumstance occur which requires the advice and consent of the Senate, he may at any time convene them." The *Federalist* (Jay), No. 64 (Ford ed.), pp. 429-430. See also Hamilton, No. 70 (Ford ed.), p. 467.

<sup>55</sup> "The nature of foreign negotiations requires caution, and their success must often depend on secrecy; and even when brought to a conclusion a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolitic; for this might have a pernicious influence on future negotiations, or produce immediate inconven-

same opinion was restated by DeTocqueville, who, because he doubted the ability of democracy to achieve this concentration, doubted its capacity to cope with foreign affairs. "As for myself," he said, "I have no hesitation in avowing my conviction that it is more especially in the conduct of foreign relations, that democratic governments appear to me to be decidedly inferior to governments carried on upon different principles. Foreign politics demand scarcely any of those qualities which a democracy possesses, and they require on the contrary the perfect use of almost all those faculties in which it is deficient."

Democracy is unable to regulate the details of an important undertaking, to persevere in a design, and to work out its execution in the presence of serious obstacles. It cannot combine its measures with secrecy and it will not await their consequences with patience. These are qualities which more especially belong to an individual or to an aristocracy and they are precisely the means by which an individual people attains to a predominant position."<sup>66</sup>

But lest the apologist of the "Ancient Régime" be thought biased, let us hear a recent writer of a different school. Mr. Walter Lippmann thus discusses the uses of a king: "The reason why we trust one man, rather than many, is because one man can negotiate and many men can't. Two masses of people have no way of dealing with each other. . . . The American people cannot all seize the same pen and indite a note to sixty-five million people living within the German Empire. . . .

The very qualities which are needed for negotiation—quickness of mind, direct contact, adaptiveness, invention, the right proportion of give and take—are the very qualities which masses of people do not possess."<sup>67</sup>

iences, perhaps danger and mischief, in relation to other powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties in the President, with the advice and consent of the Senate, the principle on which that body was formed confining it to a small number of members." Washington, Message to the House of Representatives, March 30, 1796, in Richardson, *op. cit.* p. 194.

<sup>66</sup> De Tocqueville, *Democracy in America* (N. Y. 1862), I, p. 254.

<sup>67</sup> Lippman, *The Stakes of Diplomacy*, pp. 26, 29. See also remarks of Senator Spooner of Wisconsin in the Senate, January 23, 1906: "The conduct of our foreign relations is a function which requires quick initiative, and the Senate is

As practice is the best evidence of what constitutions are, so history is the best evidence of what institutions must become, if they are to perform their functions. "Even democratic countries like France and England," says Bryce, "are forced to leave foreign affairs to a far greater degree than home affairs to the discretion of the ministry of the day."<sup>58</sup> The Greek city states in which diplomacy by mass meeting led to disaster when confronted by the astuteness of Philip of Macedon are the exceptions which prove the rule.<sup>59</sup> Thus in the United States when foreign problems have come to the front, concentrated authority has been developed to cope with them. In the first period, from 1789 to 1829, foreign relations were complex. Presidents were chosen because of their experience in diplomacy and they displayed competence and leadership. There was friction, but in all cases until the last—John Quincy Adams' policy with reference to the Panama Congress—the President's policy prevailed. In the second period, which extended from 1829 to 1898, our problems were mainly domestic. In these Congress assumed a leadership, and though Presidents continued to assert their prerogative in foreign affairs, opportunities were only occasional, and defeats were frequent. Presidents were chosen for political availability, not for ability or experience, and the Senate's power of vetoing treaties was strengthened by frequent exercise. In his *Congressional Government*, presented as a doctor's thesis in 1885, Woodrow Wilson generalized the progress of this period as follows:<sup>60</sup>

"In so far as the President is an executive officer he is the servant of Congress; and the members of the Cabinet, being confined to executive functions, are altogether the servants of Congress."

"No one, I take it for granted, is disposed to disallow the principle that the representatives of the people are the proper ulti-

often in vacation. It is a power that requires celerity. One course of action may be demanded to-night, another in the morning. It requires also secrecy; and that element is not omitted by the commentators on the Constitution as having been deemed by the framers of the most vital importance. It is too obvious to make elaboration pardonable." *Congressional Record*, Vol. 40, pp. 1419-1420; quoted in Corwin, *op. cit.* p. 176.

<sup>58</sup> Bryce, *American Commonwealth* (2nd ed.), I, p. 218.

<sup>59</sup> *Ibid.* I, p. 217.

<sup>60</sup> Wilson, *Congressional Government* (15th ed.), pp. 266, 273-274.

mate authority in all matters of government and that administration is merely the clerical part of government. Legislation is the originating force. It determines what shall be done; and the President, if he cannot or will not stay legislation by the use of his extraordinary power as a branch of the legislature, is plainly bound in duty to render unquestioning obedience to Congress. . . . The principle is without drawback and is inseparably of a piece with all Anglo-Saxon usage; the difficulty if there be any, must lie in the choice of means whereby to energize the principle. The natural means would seem to be the right on the part of the representative body to have all the executive servants of its will under its close and constant supervision, and to hold them to a strict accountability; in other words, to have the privilege of dismissing them whenever their service became unsatisfactory."

The third period began with the Spanish war of 1898. Our foreign relations have increased in complexity, and with them the President's power and influence; but because of the enlarged sense of senatorial prerogative, developed through three quarters of a century of comparative diplomatic isolation, friction has been extreme. Woodrow Wilson, then professor of politics at Princeton University, wrote a preface for the fifteenth edition of his book in 1900:<sup>61</sup>

"Much the most important change to be noticed is the result of the war with Spain upon the lodgment and exercise of power within our federal system; the greatly increased power and opportunity for constructive statesmanship given the President, by the plunge into international politics and into the administration of distant dependencies, which has been that war's most striking and momentous consequence. When foreign affairs play a prominent part in the politics and policy of a nation; its Executive must of necessity be its guide; must utter every initial judgment, take every first step of action, supply the information upon which it is to act, suggest and in large measure control its conduct. It may be, too, that the new leadership of the Executive, inasmuch as it is likely to last, will have a very far-

<sup>61</sup> Wilson, *Congressional Government* (15th ed.), pp. xi-xiii.

reaching effect upon our whole method of government. It may give the heads of the executive departments a new influence upon the action of Congress. It may bring about, as a consequence, an integration which will substitute statesmanship for government by mass meeting. It may put this whole volume hopelessly out of date."

Where the President has acted in domestic administration, he has acted within limits narrowly defined by Congress, and as time has gone on, his discretion in this field has become less and less. Where on the contrary, he has acted in foreign affairs, his discretion has been very wide, and Congress has generally followed his lead. "The Senate," says Carl Russell Fish, "has been confined to checking or modifying the policy of the administration. The direction of policy has been with the executive."<sup>62</sup> Can we not assume that the result of over a century of experience under the Constitution illustrates certain necessities in an adequate control of foreign affairs?

### III

Our system for controlling foreign relations has been copied in its main outlines on the continent of Europe, and its adoption has been suggested as a reform worth considering in Great Britain. It has in it elements making for concentration of authority in an emergency, yet it assures control of permanent obligations by the people's representatives. More than all we are used to it. Remembering Montaigne's warning that "all great mutations shake and disorder a state,"<sup>63</sup> we may question the advisability of radical change in the Constitution.

Improvement lies not in structural change in our organs for control of foreign relations,<sup>64</sup> but in the development of conven-

<sup>62</sup> Fish, *American Diplomacy* (N. Y., 1916), p. 428.

<sup>63</sup> Montaigne, *Essays* (Cotton ed.), II, p. 760.

<sup>64</sup> The writer is inclined to believe that a change in the treaty power from two-thirds of the Senate to a majority of both houses would be an improvement. This would be in accord with the practice of most continental European governments. It would obviate the complaints of the House of Representatives and eliminate the ever-present possibility of inability to execute a treaty, valid as international law, because of the refusal of the House to agree to appropriations

tions for the smooth interaction of the independent departments of government. Lord John Russell remarked that "Political constitutions in which different bodies share the supreme power are only enabled to exist by the forbearance of those among whom this power is distributed."<sup>85</sup> It is a familiar thought and has been developed in detail by Professor A. V. Dicey, who distinguishes the conventions from the law of the British constitution. The former explain how the independent organs of the supreme power, king, lords and commons shall exercise their discretion, that is, how the Crown shall exercise its prerogative and the houses of Parliament their privileges. He believes that in England, these conventions have grown up so as to assure the ultimate triumph of the will of the political sovereign, that is, the majority of the voters for members of the House of Commons.<sup>86</sup>

In the eighteenth century the British Constitution, though perhaps organized to preserve liberty, as Montesquieu, DeLolme and Blackstone thought, was a jarring and jangling instrument. There was little of smoothness in the relations of George III with his ministers and his parliaments. The United States Constitution is now in that condition. We have good institutions but we have not yet developed constitutional manners which will make them move as smoothly as a well-ordered dinner party. The crudity of Jefferson's pell mell banquet and Jackson's Peggy O'Neil cotillion persists in the relations of the departments at Washington.

Our conventions will not be those of England. In the conduct of domestic affairs our system of legally enforceable limitations

or necessary legislation. It would, also, make deadlocks less frequent, because one party is much more likely to control a majority of both houses than two-thirds of the Senate. The main objection of the fathers to submission to the House was on the score of secrecy and this has frequently been abandoned by the Senate in recent years. This change, which would of course require a constitutional amendment, would make the treaty-making power the same as the legislative power, except that the President would have the sole initiative and, retaining the ultimate decision on ratification, would have an absolute veto. See also Young, *The New American Government*, p. 25, and former Representative and Governor of Massachusetts, S. W. McCall, "Of the Senate" and "Again the Senate" in *Atlantic Monthly*, October, 1903, and September, 1920.

<sup>85</sup> Quoted by Wilson in *Congressional Government* (15th ed.), p. 242.

<sup>86</sup> Dicey, *The Law of the Constitution* (8th ed., London, 1915), ch. 14.

upon power, rather than the English system of unlimited power, subject to immediate political responsibility for its exercise, is likely to persist. We will continue to rely upon legal responsibility, rather than political responsibility as in Great Britain; or administrative responsibility, as on the continent of Europe. In short, the object of the conventions which we will develop will be the ultimate triumph of the people acting through the constitution-amending process, not as in Great Britain, through an election to the House of Commons.

In the conduct of foreign affairs, however, there will probably be a closer approximation in the two countries. At present parliamentary control does not exist in the British foreign office,<sup>87</sup> any more than constitutional limitations check the President's control of foreign relations.<sup>88</sup> In foreign affairs neither a daily questioning under threat of ousting from office, nor a judicially interpreted confinement to constitutional powers is feasible. Great discretion must be vested in a single head. Acts involving assumptions of national responsibility must be final. We must frankly recognize executive leadership in foreign affairs. But we must attempt to develop conventions so that the President's wide discretion will only be exercised after the most careful consideration possible, and in a way which will make the employment of a senatorial or congressional veto an extreme rarity, and an impeachment a virtual impossibility.

Such conventions might develop through:

(1) Declaration by Congress of permanent policies, not in any way restricting executive methods, but pointing the general ends toward which the President should direct his effort;<sup>89</sup>

<sup>87</sup> See remarks of A. J. Balfour and Premier Asquith to select committee of the House of Commons on Procedure, 1914 (Report 378), printed in Ponsonby, *op. cit.*, appendix 1, p. 121 *et seq.* and *ibid.*, ch. 5, p. 45 *et seq.*

<sup>88</sup> See H. J. Ford, "The War and the Constitution," and "The Growth of Dictatorship," *Atlantic Monthly*, October, 1917, and May, 1918.

<sup>89</sup> Some resolutions of this kind have been passed, expressive of a policy of disarmament and arbitration. See Joint resolution, June 25, 1910, 36 stat. 885, and navy appropriation act; August 29, 1916, 39 stat. 618, Comp. stat. sec. 7686a. Resolutions favoring arbitration were also passed in 1874 and 1890. See "A League of Nations" published by World Peace Foundation, Vol. I, No. 1, October, 1917.

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(2) Development by treaty of international organization and arbitration so as to bring as large a portion of diplomacy as possible under the control of recognized principles of international law, an atmosphere in which democratic institutions and particularly American institutions have always thriven;<sup>70</sup>

(3) Observance by the independent departments of government of the understanding that each will regard it as a constitutional duty to seek advice, before making a decision, from those coördinate departments whose action will subsequently be required to carry out the decision, in consideration of which those departments will regard it as a constitutional duty to perform all acts within their power necessary to give full effect to the decisions constitutionally made by coördinate departments;<sup>71</sup> finally, as a necessary condition of such observance:

(4) Maintenance of close informal relations between the agencies of government having to do with foreign affairs. Such relations now exist between the President and the administrative

<sup>70</sup> "Democracies are absolutely dependent for their existence upon the preservation of law. Autocracies can give commands and enforce them. Rules of action are a convenience, not a necessity for them. On the other hand, the only atmosphere in which a democracy can live between the danger of autocracy on one side and the danger of anarchy on the other is the atmosphere of law. . . . The conception of an international law binding upon the governments of the world is, therefore, natural to the people of a democracy, and any violation of that law which they themselves have joined in prescribing is received with disapproval, if not with resentment." Root, "The Effect of Democracy on International Law," *American Society International Law Proceedings* (1917), pp. 7-8.

<sup>71</sup> "It is a general principle that any valid act done by either the legislative, executive or judicial branches of the government is binding upon each of the others, and is not subject to be set aside by either of them." (Finley-Sanderson, *The American Executive and Executive Methods* (N. Y., 1908), p. 217.) "There is force, no doubt, in the contention that the Congress of the United States is under a moral obligation to maintain the honor of the nation, which implies the strict fulfillment of all pledges made by the treaty-making power, but there is even more weight in the affirmation that the treaty-making power is under a moral obligation not to pledge the honor of the nation in doubtful conditions, as well as under a legal obligation not to destroy the freedom of a coordinate branch of the Government by pledging it to a performance beyond the intentions of the Constitution from which all its authority is derived." Hill, *Present Problems in Foreign Policy* (N. Y., 1919), p. 171. See also Wright, *American Journal International Law*, Vol. 12, p. 94.



departments represented in the cabinet. Why should not the cabinet be enlarged so as to include representatives of the legislative branch? Addition of the vice-president who is closely in contact with the Senate, has been suggested by President-elect Harding. But a more genuine congressional point of view could be gained by admitting also the Speaker of the House, President *pro tem.* of the Senate, and perhaps the chairmen of the House committee on foreign affairs and the Senate committee on foreign relations. The President, sitting with these five officials, together with the secretaries of state, treasury, war, navy, commerce and the attorney-general would form a cabinet capable of reaching decisions on foreign affairs likely to secure coöperation from all departments of the government and yet not too large to do business.

Closer relations might also be established by the President with Congress, and especially with the Senate, through personal delivery of messages and explanations of his policy, but always at his initiative.<sup>72</sup> The present practice whereby Congress does not "direct" the secretary of state to submit papers and information, as it does other cabinet officers, but requests the real head of that department, the President of the United States, "to submit matters if in his judgment not incompatible with the public interest," must be maintained.<sup>73</sup>

<sup>72</sup> Rule XXXVI of the Standing Rules of the Senate still provides the manner in which the President is to meet the Senate in executive session. Henry Cabot Lodge, in referring to the recognition in this rule of the right of the President to meet with the Senate in consideration of treaties, said, in the United States Senate, January 24, 1906: "Yet I think we should be disposed to resent it if a request of that sort was made to us by the President." *Congressional Record*, 59th Cong., 1st Sess., Vol. 40, p. 1470, in Crandall, *op. cit.* p. 68, n. 5. President Wilson revived the custom, in abeyance since the time of John Adams, of appearing in person before Congress.

<sup>73</sup> "The act creating the Department of State, in 1789, was an exception to the acts creating the other Departments of the Government. I will not stop to refer to the language of it or to any of the discussions in regard to it, but it is a Department that is not required to make any reports to Congress. It is a Department which from the beginning the Senate has never assumed the right to direct, or control, except as to clearly defined matters relating to duties imposed by statute and not connected with the conduct of foreign relations. We *direct* all the other heads of Departments to transmit to the Senate designated papers or information. We do not address directions to the Secretary of State, nor do

Finally, close informal relations between the President and congressional committees on foreign affairs should exist, here again, at the President's initiative. President Madison was right, as Senator Lodge pointed out in 1906, in refusing to receive a Senate committee sent on command of that body to interview him with reference to an appointment of a minister to Sweden.<sup>74</sup> But the President should often invite such committees to discuss with him.<sup>75</sup> Thus without limiting the President's power in foreign relations, or in any way impairing his capacity to take speedy action when necessary, we might develop conventions which would show him how he ought to exercise his discretion—conventions sanctioned in last analysis by the possibility of senatorial or congressional veto of his measures, defeat of his party in the next election, or even impeachment.

Though this article has dealt with constitutional law and constitutional conventions, it must be emphasized that the system is not the most important part of government. Any system will work with big men. It is the merit of the British system that it brings big men to the top. The United States must develop political traditions and methods that will do the same. The people and parties must insist on men of experience and of capacity as candidates—no more dark horses. Why not with due allowance of course to the exigencies of party government, develop traditions of advancement, as from a governorship to the Senate, then to the vice-presidency, or to the cabinet, and finally to

we direct requests, even, to the Secretary of State. We direct requests to the real head of that Department, the President of the United States, and, as a matter of courtesy, we add the qualifying words, 'if in his judgment not incompatible with the public interest.' " Senator Spooner, of Wisconsin, in Senate, January 23, 1906, *Congressional Record*, Vol. 40, p. 1420, quoted in Corwin, *op. cit.* p. 177; and in Crandall, *op. cit.* p. 93.

<sup>74</sup> "In the Administration of Mr. Madison the Senate deputed a committee to see him in regard to the appointment of a minister to Sweden, I think, and he replied that he could recognize no committee of the Senate, that his relations were exclusively with the Senate." Senator Lodge of Massachusetts, during course of debate referred to *supra*, n. 73, p. 1419; Corwin, *op. cit.* pp. 174-175.

<sup>75</sup> A recent illustration is President Wilson's offer to discuss the Treaty of Versailles with the Senate foreign relations committee, an offer which resulted in several conferences in the White House during the summer of 1919. See Sen. Doc., No. 106, p. 499 *et seq.*, 66th Cong., 1st Sess.

the presidency. It was done in the first forty years of our national history.<sup>76</sup> It would lead stronger men to the Senate and cabinet. It would insure capacity and popular confidence in the President.

<sup>76</sup> Political and administrative experience of Presidents of the United States:

	VICE-PRESIDENT	CABINET	DIPLOMATY	MILITARY	FEDERAL OFFICE	SENATE	HOUSE OF REPRESENTATIVES	GOVERNOR
Washington.....				x				
Adams, J.....	x		x				a	
Jefferson.....	x	x	x				a	x
Madison.....		x					x	
Monroe.....		x	x	x		x	x	x
Adams, J. Q.....		x	x			x	x	
Jackson.....				x	b	x	x	
Van Buren.....	x	x	x			x		x
Harrison, W. H.....				x	c	x	x	
Tyler.....	x			x		x	x	
Polk.....							x	x
Taylor.....				x				
Fillmore.....	x						x	
Pierce.....				x		x	x	
Buchanan.....		x	x			x	x	
Lincoln.....							x	
Johnson.....	x					x	x	x
Grant.....		x		x				
Hayes.....				x			x	x
Garfield.....				x		x	x	
Arthur.....	x			x	d			
Cleveland.....								x
Harrison, B.....				x		x		
McKinley.....				x			x	x
Roosevelt.....	x			x	e			x
Taft.....		x	f		g			
Wilson.....								x
Harding.....						x		
28	8	8	7	14	5	12	17	10

a—Member of Continental Congress before Constitution.

b—Military Governor of Florida.

c—Governor of Indiana territory.

d—Collector of Port of New York.

e—Civil Service Commission; Assistant Secretary of Navy.

f—Special mission to the Pope.

g—Solicitor General of United States; United States Circuit Judge; Governor of Philippines.

A tradition of advancement not only from legislative to high executive office, but also in the other direction seems desirable. Why not retain the services of ex-Presidents and secretaries by electing them to the Senate. It has been suggested that our present American practice has too much the habit of having young men to begin their political career in the legislature, leaving the higher executive positions to the more experienced men in public life. One of the advantages of the old Roman Senate was that it included men that had experience in executive office. In our own recent experience, the transfer to the Senate of men like Root and Knox, who had been in the cabinet, added an element to the Senate which tended to improve that body.

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Wilson, *Congressional Government*, pp. 251-256, refers to the tendency of the governorship rather than membership in the Senate or House to be in the line of promotion to the Presidency. Reinsch notices a change in the tradition of advancement to secretary of state:

"From Monroe's secretaryship of state in 1811, down to the resignation of Mr. Blaine, that position was held constantly by men who had been United States senators, with the exception of brief interregna, covering altogether less than one and a half years, and with the exception of William M. Evarts who became a senator later in his career. Since the resignation of Mr. Blaine, an entirely new system has come into use, Senators Sherman (and Knox) being the only Secretaries of State who had also been members of the Senate. Under these circumstances, it is not surprising that there should have been more friction between the President and the Senate on foreign matters than existed during the earlier years of our national life." *American Legislatures and Legislative Methods* (N. Y. 1913), p. 95, quoted in Willoughby, *op. cit.*, p. 460.

## POLITICAL AND SOCIAL RECONSTRUCTION IN FRANCE

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In 1871 France was defeated in a six-months' war, by a rival seeking revenge for the humiliations of Jena and Auerstadt. In 1918 France emerged the victor from a fifty-one months' struggle with the same foe. But, unhappily, the spoils reaped from her victory offered slight compensation for the sacrifices she had recently been compelled to make or for the penalties she had paid forty-seven years before. The year 1918, indeed, saw the return of Alsace-Lorraine and the complete restoration of the territorial unity of the French nation; it witnessed no upheaval of government; it experienced no communist revolution. But it found France socially, politically and morally disorganized and exhausted; it found her finances upon the verge of bankruptcy; it found her manhood decimated by some fourteen hundred thousand, and one-tenth of her richest provinces scourged by the flame of war. The year 1918 found France with a form of government which in many respects was regalian and unrepresentative; it found profiteers not only preying upon the necessities of the people but systematically evading the payment of taxes; it found labor tremendously powerful and wielding its strength not so much to force the adoption of economic reforms, as to achieve distinct political privileges. The year 1918 found France confronted with a revengeful Germany, whose recuperative powers seemed far greater than her own, in a position likely to become more tragic with the developing antagonism of England and Italy and the probable withdrawal of the United States from European affairs. In fact, to many her situation appeared desperate: internal discord was undermining the social structure, while, across the Rhine, Berlin seemed preparing to fall upon a decadent state.

## I

It was natural that the French people should look to their government to remedy the disorganized and unstable condition in which the country found itself. It was equally natural that they should first demand that changes be made in the governmental organization, with a view to making it more representative of the wishes of the country and more efficient in carrying them out.

The first measure of governmental reconstruction adopted was the electoral law of July 12, 1919, already described in the REVIEW, which provided for a limited system of proportional representation and for the *scrutin de liste*. The law worked unsatisfactorily in the 1919 elections, because it provided for the use of the proportional feature only when no candidate had received a majority. As a result, the defects of both systems survived, causing dissatisfaction not only among the Socialists and Radicals who lost most heavily by it, but among the conservative elements who were forced into a *bloc*, against their will, to prevent the victory of their more radical but better organized opponents. The commission of the chamber on universal suffrage has now voted to change the present law; and it is very likely that a complete system of proportional representation will be adopted.

The idea of proportional representation in France, however, is being fast supplanted by that of professional representation, that is, the representation of interests and classes in government. In a campaign speech made in Paris, November 7, 1919, M. Millerand advocated that senators be chosen by chambers of commerce, unions of employers and employees, the General Confederation of Labor, and the academies. Furthermore, he disregarded party lines in his cabinet, for it contained a large majority of Radicals and Republican-Socialists, while the chamber is overwhelmingly conservative. In place of party representatives, he appointed experts—men with a special knowledge of the services for which they are responsible. Thus M. François Marsal, minister of finances, is a distinguished Paris banker

and financial writer—a director in the Parisian Union, and was financial councillor to M. Clemenceau during the war; M. Ricard, minister of agriculture, is a representative of the National Federation of Agricultural Associations; M. Coupin, is a former railway employee, having been President of the Federation of Railway Engineers.

M. Millerand's idea of a parliament based on professional interests, rather than geographical divisions, is not new. Occupational and economic interest, is of course, the theoretical basis of the soviet system in Russia, as pointed out in the May number of the REVIEW. As early as 1895 Charles Benoist, now the French minister to Holland, advocated a Chamber of Deputies chosen by the voters grouped in the following seven classes: agriculture, industry, transportation, posts and telegraphs, commerce, public administration, liberal professions, and capitalists. Similar suggestions have been made by Professor Léon Duguit, Jean Hennessy, and Lysis, the combative editor of *La Démocratie Nouvelle*. Thus the advocates of professional representation in Parliament are many and urgent. The basis of such a system of government, which would greatly reduce the preponderance which the lawyers now hold, already exists in the extended organization of nearly every social class and profession in France. The objections to a professional government are numerous. One is that it would multiply the number of parliamentary groupings, each seeking to serve its own interest instead of the national well being. Another is that the classification of voters in fixed and permanent categories is well-nigh impossible. Nevertheless it is possible that France may adopt the plan as a compromise with the industrial dictatorship which socialism and syndicalism have been preaching. The mere representation of labor as a class in Parliament may allay its demands for complete revolution. Moreover, such a reform, if limited to the Senate, would have little real effect upon government activities, since the influence of the upper body is naturally subordinate to that of the Chamber of Deputies.

Much has been written about the need of a more stable executive in France, and many French as well as foreign publicists have

taken this to mean a stronger and more independent president. During the electoral campaign of November, 1919, many parties urged that increased power be given the President of the French Republic, Aristide Briand being one of those most outspoken in this demand. There are theoretical as well as historical reasons, however, why the powers of the French President cannot be extended. As long as France maintains a parliamentary form of government, the minister must be responsible to Parliament. A strong and independent president, on the other hand, can only mean an executive free from parliamentary supervision. But France cannot tolerate what would virtually amount to a monarchical or Bonapartist republic because of the danger of vesting the direction of a highly centralized and bureaucratic government in the hands of an executive which Parliament cannot control. The attempts of General Boulanger and Paul Déroulède to establish a "government by plébiscite" are still so fresh in the minds of the French public that any movement tending to grant more power and independence to the executive is ordinarily looked upon as a movement of reaction. M. Clemenceau, in his famous Strasbourg speech of November 4, 1919, answered these reformists as follows:

"I see candidates who demand an increase in executive power. Having seen this grave problem 'from both sides of the fence,' if I may dare so to speak, I cannot make up my mind to follow them. The American system, where the central authority is controlled by a federation of independent states, against which no attempt at usurpation can even be attempted, cannot be introduced in France except with directly opposite results.

"The truth is very simple: the defects in executive powers are less from lack of means of action than from the too frequent incapacity of the men at the height of responsibility."

At the election for President in January, 1920, the opposition to M. Clemenceau and the election of M. Deschanel, a less aggressive personality, seemed to indicate the continued sentiment against a strong chief executive.

The prolonged illness of President Deschanel naturally brought a temporary close to the demand for an increase in executive



power. But on the other hand, it caused a demand for the creation of a vice-president, an office at present unknown to the French Constitution. Although the duties of the French President are largely formal and social, they are nevertheless very important. When he is unable to perform them, it seems that French society is leaderless. It was therefore urged that a vice-president be provided for to carry out the social and formal duties of the President during his incapacity. It is possible to amend the Constitution so as to make the vice-president also the president of the Senate. But it is unlikely that a vice-president, if created, will ever be permitted automatically to succeed to the presidency at the death or resignation of the executive, because of the ease with which the French President is elected. He is chosen merely by a majority vote of the two chambers of the French Parliament sitting together as the National Assembly.

On the 17th of September, 1920, Paul Deschanel resigned from the presidency. The subsequent election of Alexandre Millerand on the 23rd, by a vote of 695 to 69 for his Socialist opponent, Gustave Delory, has revived the discussion of a more active presidential authority. For M. Millerand's election led the radical press of France and England to declare that, in the words of *La Bataille*, "*La République est morte.*" Their fear that a new Boulanger had now been installed in power was inspired not only by the great personal force of M. Millerand, but by the statements he made upon his election. In an interview given to *Le Temps* he declared himself in favor of "revision," which, however, "had as its end, not to increase the authority of the President, but to place this authority more at the service of the government." He further qualified his statement by saying that while he believed in "revision," it could only be contemplated after France had first solved her economic and financial difficulties. In his speech of acceptance before the National Assembly, the new President also said: "If there is a particularly strict duty for the President of the Republic, it is to assure, in concert with the ministers, who are the defenders of the government's policy before the Chamber and interpreters to the President of the wishes of Parliament, the continuity of a foreign policy worthy of our victory."

These statements have led many to fear that Millerand will attempt to enlarge the powers of the presidency and overthrow the present system of parliamentary government. However, a closer examination of M. Millerand's statements will do much toward dispelling these fears. In his utterances so far he has applied the doctrine of increased presidential power largely to the direction of foreign policy. Article VIII of the constitutional law of July 16, 1875 gives the President the right to negotiate treaties and conduct foreign affairs. In President Millerand's opinion this article is worthless unless the President actually does participate in those duties.<sup>1</sup> He realizes the present straits of French foreign policy; he feels the pressure being made by the Allies to revise the Treaty of Versailles. Official France does not believe in revision, and Millerand will insist that the present foreign policy be pursued. If he does not actually control it, a weak minister of foreign affairs, under the influence of radical interpellations, may give way.

There need be little fear for the Republic, however, even if Millerand does direct the foreign policy of France. One has only to recall the rôle which Président Grévy played in the Schnaebelen affair, the parts of Carnot and Félix Faure in the negotiation of the Russian alliance, that of Loubet in laying the foundations for the Entente Cordiale, and of Fallières in the Agadir incident, to realize that the President of the French Republic has already established his right of diplomatic intervention. And the experience has not proven disastrous.

Raymond Poincaré, in a special article in *Le Temps* (Sept. 27),<sup>2</sup> commenting on these precedents, says that M. Millerand merely desires to carry on the work of former presidents. However, M. Poincaré significantly adds that "in order that he may acquit himself happily of the duty he has so well described and which, more than any other, he is capable of filling, it is desirable that

<sup>1</sup> M. Millerand apparently forgets that other articles of the Constitution grant the President even wider powers, such as the suspensive veto, the right to initiate legislation, to dissolve parliament, etc.—powers which he never directly exercises any more than the English king now utilizes his veto power.

<sup>2</sup> See also *Living Age*, November 6, 1920.

he always find . . . a prime minister and a ministry in whom he has confidence and in whom Parliament has confidence."

As M. Poincaré points out, parliamentary control must always exist, and as long as it does, ministerial responsibility must be retained. The efforts of M. Millerand toward increasing the powers of the presidency therefore will always be automatically limited by this fact, although his personal influence may go far in actually controlling the foreign policy of France.<sup>3</sup>

Demands for administrative reforms, for the decentralization of public services and for regionalism (the fusion of the present departments into a smaller number of regions, each based on natural economic delimitations) are still actively made.<sup>4</sup> M. Clemenceau advocated decentralization in his Strasbourg speech in November, 1919. M. Millerand has gone even farther in advocating regionalism; and it is interesting to note that his government took the first step toward this reform by introducing a bill establishing a regional council for Alsace-Lorraine, composed of representatives of professional interests.<sup>5</sup>

Such are a few of the measures which have been advocated or passed to improve the democracy and efficiency of the French government. One more instance may be added, for it marks the return to ordinary constitutional procedure. The 1920-24 Parliament which was called into regular session on January 13, 1920, was closed on August 1, 1920, by virtue of a decree, issued in accordance with article 2, of the law of July 16, 1875, which authorizes the President of the Republic to adjourn Parliament

<sup>3</sup> The new prime minister was Georges Leygues, a former colleague of Millerand in the famous Waldeck-Rousseau cabinet in 1899. The elevation of Aristide Briand to the premiership was contemplated by many; but the honor fell to Leygues, perhaps because of his friendship with Millerand and his willingness to carry on negotiations with the Vatican. On the defeat of the Leygues' ministry, in January, 1921, the selection of Briand as premier has been ascribed in part to the personal preference of President Millerand.

<sup>4</sup> See J. W. Garner, *American Political Science Review*, Vol. 14, p. 17 (1919); also articles in *Revue Générale d'Administration*, Vol. 42<sup>a</sup>, pp. 17, 161, Vol. 42<sup>b</sup>, p. 5 (1919), and *Revue des Sciences Politiques*, Vol. 43, p. 351 (1920).

<sup>5</sup> For a fuller discussion of the movement for professional representation and for increased executive power in France, as well of other subjects touched on in this article, see the writer's *Contemporary French Politics* (Appleton, 1920), particularly chapters VII and XI.

after it has been in session five months. This authority, however, the President had not exercised during the war; the government did not dissolve Parliament; and it sat in continual session, keeping constant watch over the work of the ministry, although of course it took occasional recesses. Its adjournment on August 1, therefore, in accordance with the terms of the Constitution, marks a return to the normal methods of French parliamentarism, that will restore to the French ministry a breathing spell; between sessions of Parliament, which during the war it was not permitted to have.

## II

The high cost of living, the disorganization of production, the instability of every phase of French economic and political life, during the early months of the armistice naturally exaggerated the grievances of labor. The apparent impotence of bourgeois governments to remedy these grievances—economic in character and largely resulting from conditions inevitably produced by the war—increased industrial unrest. It emboldened labor organizations in their demands, which now became political, and in their methods, which tended to desert parliamentary channels and to take the form of direct action.

Since November, 1918, two First of May celebrations have taken place. Both of them have been followed by political strikes which in some cases have had the overthrow of the government as their aim. Throughout the course of these two years the General Confederation of Labor has deserted the conservatism of Léon Jouhaux, its secretary; and its radical elements have been successful in forcing upon it the policy of the general strike. Within the General Confederation of Labor, the railwaymen have apparently led this movement. When conservative leaders brought an end to the strike called in February 1920, after the economic demands of the railwaymen had been granted, a great protest arose. So strong did it become that conservatives like M. Bidegaray were compelled to resign and see their places taken by radicals like MM. Sirolle and Monnousseau, who proclaimed the general strike as their goal. In

the latter part of April, 1920, the railwaymen of the State-Western line, at a convention in Havre, unanimously adopted a motion rejecting proposals to the effect that delegations of men should meet with employers to settle their difficulties; instead they demanded direct action as a means to secure their aims.

This movement culminated in the general strike attempted by the General Confederation of Labor, following the First of May (1920) celebration. At this time, the railwaymen, the metal workers, the transport workers on subways, taxicabs, street cars, etc., the electricians, and the gas workers, were all called out. The strike was unsuccessful, largely because there was no economic issue involved, and because it was called to enforce purely political demands upon the government. Its failure was also insured by the energetic action of the Millerand government which decided to bring legal proceedings against the General Confederation of Labor with a view to its dissolution. The government charged that it had gone beyond the purpose of labor unions, as laid down in the organization law of 1884, which was "the study and defense of their economic interests." At the present writing, judicial action is being taken in an attempt to dissolve this labor body. Such a stroke on the part of the government is remarkably bold, for the General Confederation of Labor now has a membership of nearly 2,000,000. It is supported by the Unified Socialist party with a polling strength of 1,700,000. If M. Millerand succeeds in this attack, he will have won a great victory; if he fails, he will have tremendously increased the confidence of labor in its own strength and its belief in the inherent weakness of the bourgeois régime.

The Unified Socialist party has also increased in size and radicalism. The party has gradually withdrawn from an adherence to the sacred union, again to proclaim the supremacy of the class struggle and to refuse to participate in bourgeois ministries or to vote credits for such a government. Despite the *bloc* formed against them, the Socialist vote increased from 1,400,000 in 1914 to 1,700,000 in 1919. Their seats, however, were reduced from 101 to 68. This naturally increased the enmity of the Socialist party for the present régime, and strengthened the

belief that in force alone—and not through the ballot—lay the one means of inaugurating the Socialist State. The increased radicalism of the Socialist party was illustrated in the Strasbourg congress, held in February, 1920. Here the party took a step which at Easter, 1919, it had proclaimed too "advanced;" it withdrew from the Second International and resolved to enter negotiations with the Third International of Moscow, a thoroughly bolshevist organization.

Thus in the syndicalist ranks of the Confederation and among the orthodox Marxian followers, the Unified Socialists, an increased hostility for the present social order has developed with astounding and disconcerting activity. It was this problem with which the two cabinets of MM. Clemenceau and Millerand had to deal. Both of these ministries, especially that of M. Millerand, were liberal in their attitude toward the reasonable grievances of labor. MM. Clemenceau and Millerand, throughout the whole course of their public careers, have posed as Socialists of some sort, and they have been responsible for the enactment of much progressive labor legislation. M. Clemenceau was too busily engaged in the peace negotiations to undertake a permanent and far-reaching solution of the problems of social reconstruction. Although order was as a rule maintained, labor grew increasingly bold; strikes became more frequent—613 occurring in the summer of 1919—and their purposes tended more and more to become revolutionary.

With the advent of the Millerand cabinet in 1920, however, the issue between labor and the government became clearly drawn. M. Millerand realized that a trial of strength must sooner or later come. He resolved to take the offensive. While energetically devoting itself to the solution of the important economic problems of the day—the cost of living, the refusal of many employers to obey the Eight-Hour Day Law, the state of the exchange—the government determined that labor should not depart from parliamentary methods to secure its own demands. The attempted dissolution of the labor confederation was the first move of the Millerand government to enforce the supremacy of law. The second was the introduction of a bill "for

the peaceful settlement of industrial disputes," by M. Jourdain, minister of labor. This bill, submitted to the Chamber of Deputies in the spring of 1920, provides for conciliation and for compulsory arbitration in a large number of industries in which the public welfare is vitally involved. According to the terms of this bill, if a dispute arises in an industrial, commercial or agricultural establishment employing more than twenty men, a delegation of the workers involved must discuss the matters under dispute with the employer or his representative. The representatives of the workers must be over twenty-one, of either sex, and have been employed in the plant for at least six months. Their number is limited to five, except in the case of establishments employing more than five hundred workers of different kinds. Such a delegation must be received by the employer within twenty-four hours after its request, and it must be given a reply within the next twenty-four hours, unless the time is extended by mutual agreement.

If such a dispute cannot be settled by the above method, it must be referred to conciliation. The conciliator may be jointly selected by the two parties, or two conciliators may be chosen, one by each side. If no agreement as to the choice can be reached, the dispute must be referred to the conciliation committee of the trade concerned or to the local justice of the peace. The parties must then be called together within forty-eight hours, and if an agreement is negotiated it must be drawn up in a collective agreement. If an agreement cannot be reached, the parties are advised to appeal to arbitration. The conciliation committee to which the parties must in this case appeal, is made up of an equal number of employees and employers; when it acts upon a compulsory arbitration case, this committee must also contain an equal number of representatives of the public, appointed by the minister of labor or other members of the cabinet.

If both parties, in the event of the failure of conciliation, decide to resort to arbitration, each nominates one or more arbitrators. If they cannot agree, they themselves choose an additional arbitrator. Any cessation of work during arbitration is prohibited.

Compulsory arbitration with the equal prohibition of any "collective cessation of work" while the decision is being arrived at, is prescribed for the following industries of an essentially public nature, and the stoppage of which would endanger the life and the health of the community: (a) railroads, street car lines, and other means of transportations on land or sea; (b) gas and electricity works; (c) coal mines, water, lighting and power plants; (d) hospitals; (e) in towns of over 25,000 inhabitants—funeral undertakers, garbage collectors, etc.

If a strike occurs illegally in any of these plants for which compulsory arbitration is imposed, the government may take over the plant and personnel, and take whatever means it wishes to ensure the operation of the public services. Heavy penalties are imposed for the violation of the terms of the law.

This bill, in short, provides for a system of settlement of industrial disputes similar to that of the Canadian Industrial Disputes Act; it does not prohibit permanently the right to strike, but temporarily, during the period of arbitration. There is no provision compelling obedience to the arbitral award. Public opinion, it is hoped, will be able to enforce it.

In a third respect, the Millerand government exhibited a firmness lacking in previous ministries. The right of functionaries to organize into regular labor unions or syndicates, under the terms of the organization law of 1884, has been repeatedly denied. But notwithstanding this fact, many organizations of government employees, notably the school teachers, have for many years been organized in labor unions, and affiliated with the general confederation. Furthermore, in the spring and summer of 1919, practically all of the government employees' associations, most of which were known as *amicales*, became syndicates and joined the central labor body. The Clemenceau government did nothing to stop this clearly illegal movement. But the Millerand government, in June, 1920, ordered the syndicates of government employees dissolved. The National Federation of Functionaries, composed of 300,000 government employees, which had adhered to the General Confederation of Labor, refused to comply, saying that the government had agreed to maintain the *status quo* until a new law on the status of function-



aries had been enacted. It remains to be seen whether the government will be strong enough to effect these dissolutions; the announcement of its intention, however, has been apparently successful in preventing the future adhesion of those organizations of functionaries not yet affiliated to the General Confederation of Labor. Thus the Congress of Police in the latter part of June, 1920, voted down a motion to become a syndicate, and decided to remain an *amicale*. The Millerand government does not deny the right of association to functionaries; such a right is granted to them by the associations law of 1901; but it does deny them the right to form typical labor unions, bringing with them the strike and affiliation with the General Confederation of Labor.

In attempting to dissolve the General Confederation of Labor, to enforce compulsory arbitration, and to prevent functionaries from combining in labor unions, the Millerand government has virtually enacted a revolution in labor policy. If it succeeds, it will have definitely and perhaps permanently established the supremacy of the government over economic groups within its midst. To succeed, however, it seems certain that the government must give labor some assurance that its reasonable demands will be accorded through political means, and that it will secure some actual participation in government and industry.

The Millerand government toward this end introduced a far-reaching bill (June, 1920) governing the whole scope of the place of the government employee in public administration. This bill lays down the methods of employing and promoting government employees, which shall be by competition, examinations, and periods of probation. It declares that strikes are absolutely illegal in any of the public services. It provides that each public service is to have an administrative council, upon which government employees are to be represented. Grievances of employees may be brought to this council. It is also to serve as a body of promotion and of discipline. In fact, it is to give the government employee an actual part in the direction of the service to which he belongs. In order to unify the activities of these administrative councils, a superior administrative council is to be formed as a court of appeals.

## III

An extreme radicalism, however, has not been the sole distinctive feature of the program of the General Confederation of Labor. Its plan for the nationalization of the French railway system, on the contrary, seems to be a comparatively moderate effort toward social reform. This plan is so important not only from the labor standpoint, but from that of syndicalism and the railway question in general, that it warrants special attention.

The General Confederation of Labor insists that the railroads must be administered by "collectivity" and for the interests of the public, that the managers and personnel of every rank must be responsible for the management, and at the same time, that all must be interested in the financial return of the roads. The roads must be centralized in general direction; on the other hand, actual control must be decentralized, and responsibility placed on local groupings.

The General Confederation of Labor has drawn a distinction, as the guild socialists everywhere are now doing, between *étatisation* and *nationalisation*. *Étatisation* is state socialism—the centralized and autocratic direction of industry by an all-powerful and bureaucratic state. *Nationalisation*, on the other hand, is the direction of industry, itself owned by the nation, by experts and representatives of all interests—producers, consumers, employees and employers—all coöperating. Under the system of *étatisation* a ministry and a parliament would direct industrial enterprises with little skilled knowledge, and by juggling selfish, political interests. Under the new system of *nationalisation*, political parliaments are to surrender this power to highly technical and autonomous groupings invested with the power and ability efficiently to carry on industrial activities. Just how such a plan may work out, is shown by the organization which the General Confederation of Labor advocates for the French railway system.

According to its plan, the management and the administration of the roads must include representatives of (1) railroad labor organizations, (2) the General Confederation of Labor as well as producers' organizations, (3) the public, such as syndical

chambers of industries, agricultural associations, and the National Federation of Coöperatives, (4) the government in the person of highly technical functionaries.

A council of central administration with 18 members is advocated, which shall be composed of 3 members chosen by the Federation of Railwaymen; 3 by the Organization of Railway Technicians; 3 by the General Confederation of Labor; 3 by the General Confederation of Employers; 3 by the National Federation of Coöperatives; 1 by the Confederation of Intellectual Workers or 1 by the French Touring Club, and 2 (as commissioners) by the government. At present, according to the General Confederation of Labor, it is impossible to interest workers in the efficiency and progress of the railway system so long as they have no interest in the management or in the returns of the roads. To give them a share in both, is not only industrial justice, it is urged, but will add to the productivity of the roads.

The General Confederation of Labor believes that the general direction of the roads should be centralized so as to avoid duplication. According to its plan, the state would place the general management of the roads in the hands of a *régie des chemins de fer*, which is equivalent to a joint stock company. At its head would be the central council of administration, composed as above, to which the railroad executives charged with the general direction of the roads, would be responsible. Beneath the central council, regional councils of administration are proposed, each composed of eleven members, chosen according to a system of professional representation. These councils will oversee the execution of measures decided by the council of central administration, such as the extension and operation of roads, the promotion of employees, etc. These regional councils are to operate the roads in their respective regions, while the council of central administration will coördinate and direct regional efforts.

Each one of these councils is to be supplemented by a representative assembly, the central council with a general assembly charged with examining and approving the acts of the central

council; it will also fix financial programs and approve rates. The regional council is to be supplied with a regional assembly, composed of representatives of the following regional groupings: (1) skilled workmen, (2) industrial syndicates, (3) chambers of commerce and chambers of agriculture, (4) coöperative associations, (5) liberal professions, and (6) the Touring Club. This assembly will oversee the regional council; in addition it will select the representatives for the general assembly.

There are many objections to this plan of the General Confederation of Labor: it is ill-defined; there is an abundance of advisors and a dearth of actual executives; labor, although supposedly in a minority, is given directly or indirectly, an over-large representation in managerial councils.

The government, responding to the plan of the General Confederation of Labor, itself introduced a railway bill calling for the reorganization of the roads. It suggested a supreme railway council with power to coördinate the different lines, to revise and standardize rates, and to frame all regulations. This council is also to be composed of representatives of professional interests: (1) the engineering and administrative staffs of the roads, (2) railway labor, (3) chambers of commerce, (4) Parliament, (5) the ministry. The profits are to be divided among the companies proportionally to the number of cars loaded and tonnage carried by each.

Both of these projects are of far-reaching significance, not only from the standpoint of railway administration (which it is beyond the competency of this article to discuss) but from the general question of the representation of labor in industry. It need scarcely be said that the attempt of the General Confederation of Labor to enforce its projected reforms upon the government by means of a general strike—by force rather than by parliamentary means—is an assault at the foundation of constitutional government. But aside from this, the General Confederation of Labor's plan for nationalization reveals the astonishing fact that this great labor organization, which throughout its entire history has worshiped the syndicalism of Georges Sorel, has at least temporarily abandoned its insistence on the

abolition of the capitalist régime. If it limits its plans for the re-making of the social order to such schemes as its railway project, it will have admitted the necessity of all classes coöperating with each other, in the management of industry; for its plan calls, not for the complete direction of the roads by railway labor, as the revolutionists so often have demanded, but for their mere representation in directing bodies upon which every class—from capitalist to consumer—are to be included. Thus although the General Confederation of Labor has not yet deserted the doctrine of the general strike, it has apparently deserted the doctrine of the dictatorship of the proletariat and the extinction of the capitalist class. It is probable that the General Confederation of Labor is palliating its more radical members by speaking of these measures as "transitory." But it is more probable that the inauguration of labor representation in the actual management of industry—industrial democracy—will bring an end to the demand for the class struggle and the social revolution.

## IV

Of the moral and religious problems confronting the French nation, the most outstanding is that of depopulation. A diminishing birthrate has caused particular anxiety on account of the rapid increases in the population of Germany. The government has resorted to many expedients to overcome this danger. Additional votes for children, to be cast by the father, have been advocated and have narrowly failed of being secured; medals to mothers—bronze for having reared five children, silver for eight, and gold for ten—are being awarded; material exemptions from taxation are made to fathers of large families; while bachelors must pay a surtax on their incomes of 25 per cent, and childless husbands 10 per cent. These rather humorous measures of "reform" only scratch at the surface of the real problem. The causes of a declining birthrate in France are economic and moral. The old system of marriage—the *mariage de convenance*—family alliances where young people, often strangers to each other, were forced into matrimony more as an affair of real estate than of

sentiment—resulted in a countless number of unhappy unions. The stringency of divorce laws and the stern attitude of the Catholic Church toward divorce prevented many open separations. Consequently a great number of unhappy homes were nominally maintained intact, while illicit unions were often established. These conditions, together with the quest for luxury, naturally produced childlessness. Perhaps the majority of French homes are happy; but among those which are not, there is slight compunction at departing beyond the bounds of conventional morality. As a result, prostitution flourishes; the mistress is an institution; abortion is practiced unchecked; and “angel making” is an industry. The war severely shook the *mariage de convenance*; marriages of real sentiment became more frequent. This may bring a change for the better. Parliament is also realizing the need of suppressing neo-Malthusian practices. The greatest need of all, however, is the realization of the responsibility of the individual to the home and of the home to the nation. French experience has proved what many so-called radicals have recently attempted to deny: that the home is the foundation of the nation, and upon its existence national integrity depends.

The politico-religious problems in France center around the relation of the government to the Catholic Church. One of the most significant events of the last year has been the dispatch of M. Doucet as *chargé d'affaires* to the Vatican, and the introduction of a bill by the government, asking credits for an embassy to the Holy See. Since 1905 France has maintained no official diplomatic relations with the Vatican. The change which the government is now trying to bring about is caused partly by considerations of foreign policy. But it is also caused by the desire to bury the anti-clerical quarrel which since the formation of the famous *bloc* during the Dreyfus affair, has kept France divided into two bitterly hostile camps. The separation laws of 1905 and 1907, it appears, removed clericalism as a menace to republican institutions. Despite this fact, successive anti-clerical governments have borne an antagonistic attitude not only toward the Pope but toward Catholicism in general which has naturally embittered many Catholics who have been patriotic

Frenchmen; and has also prevented them from having a share in the administration of the government. The Millerand government decided to bring an end to such a situation, and has been therefore pursuing the policy of pacification which men such as Raymond Poincaré and Aristide Briand have been long advocating. The government hopes that the resumption of diplomatic relations with the Vatican will not only reconcile domestic differences between Clericals and anti-Clericals, but that it will lead to a recognition by the Pope of the present separation régime.

The second religious problem involves that of the congregations—special orders of the Church. Since the days of the French Revolution the government has attempted to control their numbers; despite this fact, in 1901 there were 19,424 congregations in France with 159,629 members; their real property was valued at ninety-two million dollars. These organizations were jealous in propagating the Catholic cause, and they were well organized. The fact that they were largely teaching orders, in charge of the education of many Catholic children, gave them a tremendous influence which they were not slow in using to attack the republic and to advocate the establishment of a clerical monarchy. The struggle against the religious and educational activities of the congregationists was nominally ended by the passage of the Associations Law of 1901. This law provided that no congregation could be formed without an authorizing law, and that those legally constituted should be subject to many restrictions. As a result, 17,000 unauthorized congregations were dissolved; and many famous orders and monasteries were closed, and monks driven into foreign countries. In 1914 one of the most stirring features of the declaration of war was the return of thousands of these monks, to enlist as defenders of the country which had treated them so harshly.

In a speech made in Paris, in November, 1919, M. Millerand demanded a readjustment of the relations of the government and the congregations. Quoting a statement he made in 1917, he said, "it seemed to me morally impossible that, the war ended, we should lead the members of the congregations back to the frontier after they had crossed it to take part in common dangers with their French brothers.

"What I said then, I repeat today. I have changed neither thought nor opinion. I ask simply that religious or non-religious interests should have the same right of association, under the law, to defend and propagate their opinions; but that, as other citizens, religious as well as anti-clerical advocates should realize, especially when they teach, they must never forget that the school is sacred, that it shelters young men who must not be given over to political enterprises, and that the state has not only the right but the duty of entering all the schools, private or public, to assure itself that they conform themselves to public law and morals." Thus it appears that M. Millerand has pledged himself to readjust another political difficulty with the Church.

Closely connected with the matter of the congregations is that of the schools. Here two questions are involved. The Catholic Republicans, represented by the *Libérale Action Populaire*, have insistently demanded that they should not only have the right to send their children to Catholic schools—a right which they now possess—but that the government should support these schools. In other words, they advocate the proportional division of school funds among different sects, in order that each may educate its own children according to the beliefs of their parents. It is very unlikely that such a demand will ever be granted. If the Catholic elements in France ever become strong enough to pass such a reform, they will be strong enough to give the entire public school system a Catholic imprint. Once in power, they would surely do the latter rather than the former.

Diametrically opposed to the projects of the Catholic Republicans, many Radical-Socialists have demanded the abolition of all private church schools, and the compulsory attendance of every child at a public school from which clerical and religious influences of every nature should be rigorously excluded. They have not been loud in this demand for they realize that a state monopoly of education is at this time impossible. This was the position taken by M. Brard at the Radical congress of Pau in 1913. For that reason he urged the passage of a law which, instead of providing for the total suppression of the *école libre*, should stipulate that in every commune where public



schools are sufficient to handle the children of the community, no private school can be opened without the authorization of the minister of public instruction. The congress voted a proposition which would place all the Catholic schools under strict government supervision. Despite the attacks of the Radicals, it is probable that "liberty of education" will be maintained, and that the church school will continue to exist, subject to rigid government inspection.

## V

The most stupendous task which confronted the French Parliament of 1920 was the liquidation of the financial problem. On March 29, 1920, M. Marsal made a speech before the chamber showing the difficulty in which France found herself. He estimated the 1920 budget as follows:

	<i>frances</i>
Ordinary budget.....	17,800,000,000
Extraordinary budget:	
First section.....	6,600,000,000
Second section.....	952,000,000
Expenses recoverable from Germany.....	22,000,000,000
Increase in debt.....	3,000,000,000
	<hr/>
Total in round numbers.....	50,500,000,000
Resources:	
Present taxes.....	11,000,000,000
New taxes.....	7,000,000,000
Liquidation of war material.....	3,000,000,000
	<hr/>
	21,000,000,000
New loans	
(to cover the amounts eventually recoverable from	
Germany).....	21,000,000,000
	<hr/>
Total resources.....	42,000,000,000
Deficit.....	8,500,000,000
	<hr/>
	50,500,000,000

The situation facing Parliament, therefore, was an actual deficit of  $8\frac{1}{2}$  milliard francs, which could be raised only by new taxes, and 21 milliards which must be raised by new loans. This latter amount however, is eventually to be paid back by Germany,

as it goes toward reconstruction work. To raise  $8\frac{1}{2}$  milliards in new taxes was an enormous task, in the light of the taxes already existing. Nevertheless, the French Parliament accomplished it by the passage of the finance law, promulgated June 26, 1920. The details of the bill need not be discussed. But the additional sum was provided for by raising the rates of existing taxes, and by instituting a new tax—a tax on business figures, which is itself supposed to bring in over  $6\frac{1}{2}$  milliard francs. Twenty-two per cent of these new resources is to come from taxes on acquired wealth; 78 per cent from taxes of consumption. Thus it seems that France has sacrificed modern principles of taxation in order to raise money in the quickest and the easiest way possible. At any rate, the new financial legislation has placed an average burden of 550 francs upon each inhabitant. The income tax rates illustrate the increased charge on French citizens. On an income of 600,000 francs which, according to the present rate of exchange would be about \$50,000, a Frenchman with a family of three children would have to pay an annual tax of about \$30,000, or over half of his income. A New York taxpayer, on the other hand, with a similar income would pay (in federal as well as state taxes) only a little more than \$7,000. Thus the Frenchman pays about four times the taxes of an American in a similar position. Such a comparison may give an idea of the sacrifices which the people of France are undergoing largely to repair costs which were inflicted by Germany. The passage of the Finance Law of June 26, 1920 is a remarkable achievement; and it is one of the most stimulating indications that France is on the road to economic and political recovery.

In view of the recent financial conference at Brussels and of the campaign carried on in Allied countries against French financial policy, it is well to state the French side of the argument. This has been ably done by William Oualid, in an article in *L'Europe Nouvelle* (October 3, 1920) entitled "The Taxing Capacity of France." Before the war the wealth of France was estimated to be about 240 milliards. The national income was placed around 27 milliards. The government levied taxes upon this income amounting to about 4 milliards, or 15 per cent.

During the war the national income was greatly increased by profits, salaries and inflation in general; but it was diminished by the damages inflicted on the devastated regions and by the loss of investments in foreign countries, notably Turkey and Russia. Estimating these various factors, it seems that the national income may have increased 200 per cent and at the present time may even amount to 75 or 80 milliards. If this generous figure be accepted, the French government today takes about 25 per cent of the national income in taxes, whereas before the war it took only 15 per cent.

A more important consideration is the loss of men and the consequent diminution of taxable population. Before the war the population of France was about 39,000,000. The war killed a million and a half; and it indirectly reduced the entire population, for in the 77 non-invaded departments, between 1914 and 1919, there were 1,389,916 more civilian deaths than births. As a result, the population of France today is but 36,000,000. This condition is even worse when the actual taxpaying population is considered. Before the war there were 11,700,000 heads of families, 1,900,000 bachelors above the age of 25, and as many unmarried women—making a total taxable adult population of 15,500,000. In 1913 the per capita tax was about 108 francs; the tax per taxable adult was about 270 francs. Today the individual charge has quadrupled. Each survivor, man, woman, or child, must pay an average tax of 527 francs. Since the number of taxable adults has been reduced during the war by a million and a half, this latter class must pay an average annual tax of 1350 francs.

Such is the sacrifice the French taxpayer is compelled to undergo. How does it compare with that of the Englishman? At the beginning of the war the national wealth of the United Kingdom was about 425 milliards and its annual income, 44 milliards. England was not invaded and her population was not diminished to the same extent as France. During the last year there were 228,000 more births in England than deaths. Today the sum total of English taxes amount to but 19.4 per cent of the national income, while the per capita tax in England

is about 565 francs and the average tax per taxable adult is 1180 francs, nearly 200 francs less than that borne by the Frenchman. These figures are of course approximate; but they suffice to answer the persistent charges that France is trying to shift the financial burdens of the war to unborn generations.

No one will deny that France has the moral right to demand that Germany repair the civilian damages which she inflicted. The reason why France has stood out against fixing the amount of the indemnity is because she feels that England and Italy, in order to bring the economic world "back to normalcy," will permit its reduction to a point far below that to which France is entitled. It is a significant fact that the French government has already advanced over 20 milliards to the devastated regions, an amount greater than the whole estimate of the French damage made by J. Maynard Keynes in his *Economic Consequences of the Peace*. "Liberals" may cry "corruption" in reply to this fact, but those who have seen the devastated areas of France will realize that the material cost of replacing them is nearly incalculable.

Insistent voices in England and America have suggested that France remit a portion of her financial claims against Germany; and England to the alarm of French publicists, has already waived some of her rights, under paragraph 18 of Annex II of Part VIII of the treaty, to sequester goods of German merchants in England on the indemnity account. But France has always brought an effective reply: "We cannot forego a single franc which Germany owes us until England and America agree to waive the debt which we owe to them. If you insist on payment, we must insist upon the payment of the German indemnity." So far no one in authority in England and America has suggested that the advances which these countries have made to France, be cancelled. Liberalism is a shoe which America should first try to fit on her own foot. Indeed when France is reproached for her intransigence in regard to the treaty, she must be grimly reminded of that Spanish proverb: "God protect me from my friends and I will take care of my enemies."

The legislative measures discussed in the course of this paper are a few examples of the strenuous efforts which the French parliament is making to reconstruct the nation. The Millerand ministry and the first session of the new Parliament have already accomplished much. As a result, the pessimism which, during the Peace Conference, beclouded the future, is giving away to the exuberant hope that it will not be long before France will have regained her grandeur of the past.

## CONSTITUTIONAL LAW IN 1919-1920. II

### THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1919

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#### IV. THE, TREATY-MAKING POWER

From the historical point of view no more interesting case was decided last term than that of *Missouri v. Holland*,<sup>43</sup> in which a bill in equity brought by the state of Missouri to prevent a game warden of the United States from attempting to enforce the Migratory Bird Treaty Act of July 3, 1918,<sup>44</sup> and the regulations made by the secretary of agriculture in pursuance of this act was finally dismissed, Justices Van Devanter and Pitney dissenting without opinion.

The objectors to the statute and the underlying treaty based their argument upon the Tenth Amendment,<sup>45</sup> supplemented by the proposition that the control of migratory birds within their respective limits is a power reserved to the states,<sup>46</sup> and from these premises they proceeded to draw the conclusion that "what an act of Congress could not do unaided, in derogation of the powers reserved to the states, a treaty cannot do." But, Justice Holmes answers in his opinion for the

<sup>43</sup> 252 U. S. 416.

<sup>44</sup> The act gives effect to the Treaty of August 16, 1916, between the United States and Great Britain, which pledges this government and the Canadian government reciprocally to protect certain game birds making seasonal migrations from the United States into Canada and vice versa. Earlier than this Congress had, by the Act of March 4, 1913, attempted to extend the protection of the national government over migratory game birds, but the act had been held void by a state and one or two federal courts, passing muster, however, in another. It was before the Supreme Court in *Cary v. So. Dak.*, 250 U. S. 118, but for construction only. See the present writer 14 *Michigan Law Review*, 613 ff.

<sup>45</sup> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

<sup>46</sup> Citing *Gear v. Conn.*, 161 U. S. 519.

court, the treaty-making power is expressly delegated to the United States,<sup>47</sup> treaties made under the authority of the United States are the supreme law of the land,<sup>48</sup> and by article 1, section 8, Congress may pass all laws necessary and proper to carry valid treaties into effect.<sup>49</sup> He then proceeds:

"Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. It is open to question whether the authority of the United States means more than the formal acts prescribed to make the convention. We do not mean to imply that there are no qualifications to the treaty-making power; but they must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well-being that an act of Congress could not deal with, but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found.<sup>50</sup> . . . . The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the 10th Amendment. . . . Here a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power. The subject-matter is only transitorily within the state, and has no permanent habitat therein. But for the treaty and the statute, there soon might be no birds for any powers to deal with. We see nothing in the Constitution that compels the government to sit by while a food supply is cut off and the protectors of our forests and of our crops are destroyed. It is not sufficient to rely upon the states. The reliance is vain, and were it otherwise, the question is whether the United

<sup>47</sup> Article 2, section 2, which reads: "He [the President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur."

<sup>48</sup> See note 28, *supra*.

<sup>49</sup> "The Congress shall have power . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

<sup>50</sup> Citing *Andrews v. Andrews*, 188 U. S. 14.

States is forbidden to act. We are of opinion that the treaty and statute must be upheld."<sup>51</sup>

These rather sweeping propositions raise some interesting questions with reference to Part 13 of the pending Peace Treaty with Germany. This division of the treaty provides for an International Labor Conference whose "draft conventions" or "recommendations," as the case may be, must be submitted to the proper authorities of the member states for action upon them within a year. But "in the case of a federal state," the document reads, "the power of which to enter in conventions is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only." Supporters of the league and the treaty in the senate and elsewhere have been at pains to explain that this provision was inserted at the particular instance of the United States and to meet the requirements of the United States Constitution. It may, however, be fairly asked, with *Missouri v. Holland* in mind, whether the power of the national government to enter into conventions on labor is "subject to limitations." And if it is not, we are confronted with the further question, whether we should like to see the treaty-making power and Congress, either separately or conjointly, vested by an unqualified ratification of Part 13 of the treaty with the power of enacting for the United States such recommendations as the International Labor Conference may elect to make from time to time. Unquestionably *Missouri v. Holland* makes more important than ever the political check which resides in the senate on the treaty-making power.<sup>52</sup>

<sup>51</sup> Among the parts omitted in the above quotation from the opinion is the following striking passage: "We may add that when we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience, and not merely in that of what was said a hundred years ago." Among the cases cited by Justice Holmes to demonstrate that treaties otherwise valid may override state power are *Baldwin v. Franks*, 120 U. S. 678; *Hopkirk v. Bell*, 3 Cranch 454; *Ware v. Hylton*, 3 Dall. 199; *Chirac v. Chirac*, 2 Wheat. 259; *Hauenstein v. Lynham*, 100 U. S. 483; *Geofroy v. Riggs*, 133 U. S. 258; *Blythe v. Hinckley*, 180 U. S. 333; *Wildenhus's Case*, 120 U. S. 1.

<sup>52</sup> The case has another interesting aspect. "The ground of the bill is that the statute is an unconstitutional interference with the rights reserved to the states



## V. ADMIRALTY JURISDICTION

In *Knickerbocker Ice Company v. Stewart*<sup>53</sup> the Act of Congress of October 6, 1917, permitting the application of workmen's compensation laws in the several states to injuries occurring within the admiralty and maritime jurisdiction was held void. The decision rests upon the following propositions: (1) that the Constitution approved the system of maritime law "coextensive with and operating uniformly in the whole country;"<sup>54</sup> (2) That while Congress was given the power to legislate in respect to this system, such power must not be used in a way to interfere with the uniformity which the Constitution sought to secure; (3) that "Congress cannot transfer its legislative powers to the states."

The historical accuracy of the first point is open to serious question. The second point confuses two quite different matters. For while it was undoubtedly the intention of the Constitution to transfer the power to lay down the maritime law for the country from the states to Congress, there is nothing in the Constitution to indicate that the rules enacted by Congress within this field must be the same for all sections of the country, and the presumption must be, accordingly, that Congress was clothed with full legislative discretion in the matter. Nor is the third point more persuasive. The act here held void did not attempt a transference of legislative power either in the sense of a permanent abdication of power, since it may be repealed at any time, nor yet, necessarily, in the sense of an avoidance of responsibility. It presumably represented the deliberate judgment by Congress as to

by the Tenth Amendment, and that the acts of the defendant, done and threatened under that authority, invade the sovereign right of the state and contravene its will manifested in statutes. The state also alleges a pecuniary interest, as owner of the wild birds within its borders and otherwise, admitted by the government to be sufficient, but it is enough that the bill is a reasonable and proper means to assert the alleged quasi sovereign rights of a state. *Kansas v. Colorado*, 185 U. S. 125; *Georgia v. Tennessee Copper Co.* 206 U. S. 230; *Marshall Dental Mfg. Co. v. Iowa* 226 U. S. 460." All of which seems to leave very little of the doctrine of "political questions" as applied in *Georgia v. Stanton*, 6 Wall. 50.

<sup>53</sup> 253 U. S. 149, decided May 17. The act under review was passed to remedy the effect of *Southern P. Co. v. Jensen*, 244 U. S. 205. See Professor Powell's review of the latter case in 12 *American Political Science Review*, 43.

<sup>54</sup> Citing the *Lottawanna*, 21 Wall. 558. All that the Constitution says is that "the judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction," article 3, section 2. See also note 49, *supra*.

what was best for the situation dealt with,<sup>55</sup> and is certainly a far less striking delegation of power to the states than that which was upheld in the Clark Distilling Company cases<sup>56</sup>—to say nothing of the sweeping delegations of legislative power to executive authorities which have been sustained in recent years.<sup>57</sup> On both these accounts the dissenting opinion of Justice Holmes, speaking for himself, and Justices Pitney, Brandeis and Clarke, has much the better of the argument.<sup>58</sup>

## VI. DUE PROCESS OF LAW, MISCELLANEOUS

### 1. Judicial Procedure

Several decisions deal with the privileges of accused persons.<sup>59</sup> We learn that the powers of the grand jury to investigate are original and

<sup>55</sup> Justice McReynolds evidently recognizes the force of this presumption and endeavors to meet it in the following words: "Neither branch of Congress devoted much debate to the act under consideration—altogether, less than two pages of the Record (65th Cong., pp. 7605, 7843). The Judiciary Committee of the House made no report; but a brief one by the Senate Judiciary Committee, copied below, probably indicates the general legislative purpose. And with this and accompanying circumstances, the words must be read." This is a novel type of argument for this kind of case, though, in view of the flexibility of the modern test of "delegation of legislative power," it may be necessary and valid.

<sup>56</sup> 242 U. S. 311. See also Professor Powell's review of the case in 12 *American Political Science Review*, 19 ff.

<sup>57</sup> The leading case is *United States v. Grimaud*, 220 U. S. 506. None of the sweeping delegations of power by Congress to the President during the war have been disturbed by judicial decision. Cf. Fairlie on "Administrative Legislation," in *Michigan Law Review*, January, 1920.

<sup>58</sup> Justice Holmes makes the point in his dissenting opinion, that the act might have been easily construed so as to avoid the argument against delegation of legislative power, by confining the words "rights and remedies under the Workmen's Compensation Law of any state" to refer solely to laws existing at the time of the passage of the act of Congress. The origin of the argument which Justice Holmes thus endeavors to meet is to be found in Justice Curtis's opinion in *Cooley v. Board of Wardens*, 12 How. 299. It may be suggested that, as Congress's legislative powers develop, it will be increasingly necessary for it to take account of local differences and necessities.

<sup>59</sup> The Fourth, Fifth and Sixth Amendments are the ones involved. The first reads thus: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Amendment Five reads thus: "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury,

not dependent for their exertion upon the approval or disapproval of the court;<sup>60</sup> that it is valid to try several defendants together and treat them as a single defendant for the purpose of peremptory challenges;<sup>61</sup> that a person found guilty of murder and sentenced to life imprisonment is not placed twice in jeopardy if on a second trial, the first having been reversed on writ of error sued out by the accused, he is again found guilty, and then sentenced to death.<sup>62</sup> Also, it appears, no self-incrimination results from the use of letters which were written by accused after his crime and which came into possession of the prison officials under established practice reasonably demanded for the maintenance of discipline.<sup>63</sup>

A more notable case in the same field is that of *Silverthorne Lumber Company v. United States*.<sup>64</sup> Representatives of the department of justice arrested the two Silverthornes, and, while they were detained, went "without a shadow of authority" to the office of the Silverthorne Company and made a clean sweep of all books, papers and documents there found. Later an order was issued for the return of these, but meantime the government representatives had had them photographed. The question in the instant case was whether the two Silverthornes were in contempt of court for refusing to respond to a subpoena ordering them to bring the original documents into court, which subpoena had been sought on the strength of the knowledge gained in consequence of the illegal act of seizure. It was held that the government

except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

The words of the Sixth Amendment are as follows: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

<sup>60</sup> *United States v. Thompson*, 251 U. S. 407.

<sup>61</sup> *Stilson v. United States*, 250 U. S. 583.

<sup>62</sup> *Stroud v. United States*, 251 U. S. 15.

<sup>63</sup> *Ibid.*

<sup>64</sup> 251 U. S. 385.

cannot thus profit by its own wrong-doing.<sup>65</sup> The attention of Attorney General Palmer is respectfully drawn to this case.

Two cases have to do with the right of trial by jury in civil cases.<sup>66</sup> The first informs us that this right is not infringed in an action at law involving long accounts and many disputed items by the appointment of an auditor with power to make a preliminary investigation and report his findings for the aid of the jury.<sup>67</sup> The other determines that a federal court of appeals may not reverse a judgment rendered in a court below, upon a verdict for the plaintiff, without ordering a new trial.<sup>68</sup>

## 2. Administrative Procedure

Several cases are of distinct interest to the student of administrative law. In a Chinese deportation case the court set aside a decision of the secretary of labor denying admission into the United States to a Chinese claiming American citizenship, the decision being grounded on the defective form in which the record of testimony taken in the case had been brought before the secretary.<sup>69</sup> In another similar case it was

<sup>65</sup> Said Justice Holmes, of the Government's endeavor to avail itself of knowledge obtained by illegal means: "The proposition could not be presented more nakedly. . . . It reduces the Fourth Amendment to a form of words." The case should be collated with *Adams v. New York*, 192 U. S. 585 and *Weeks v. United States*, 232 U. S. 383. See also *Flagg v. United States*, 147 C. C. A. 367, 233 Fed. 481, which is cited by Justice Holmes with approval. In the instant case the Chief Justice and Justice Pitney dissented.

<sup>66</sup> The Seventh Amendment, which is here involved, reads: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no trial by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

<sup>67</sup> *Re Walter Peterson*, 253 U. S. 300. There were three dissents.

<sup>68</sup> *Fidelity Title and Trust Co. v. Dubois Electric Co.*, 253 U. S. 212. The decision is principally interesting as showing that *Slocum v. N. Y. Life Ins. Co.*, 228 U. S. 364, now has the approval of the entire court.

<sup>69</sup> *Kwock Jan Fat v. White*, 253 U. S. 454, decided June 7. A closing paragraph of Justice Clarke's opinion for the unanimous court deserves quotation: "The Acts of Congress give great power to the Secretary of Labor over Chinese-immigrants and persons of Chinese descent. It is a power to be administered, not arbitrarily and secretly, but fairly and openly, under the restraints of the tradition and principles of free government applicable where the fundamental rights of men are involved, regardless of their origin or race. It is the province of the courts, in proceedings for review, within the limits amply defined in the cases cited, to prevent abuse of this extraordinary power, and this is

held that a Chinese returning to the United States may not be deported, on the ground that his original entry was attained by fraud, without a judicial inquiry into his rights. The court emphasized the distinction between the case of a Chinese in the United States and one seeking to enter, a distinction which would seem to be applicable generally in deportation cases.<sup>70</sup>

### 3. Various

*Caldwell v. Parker*<sup>71</sup> determined that Congress did not by reenacting, in the Act of August 29, 1916, the Articles of War, vest the military courts in war time with exclusive jurisdiction to try and punish a soldier for the murder of a civilian at a place within the jurisdiction of a state and not within the confines of a camp or arsenal. Two cases emphasize the familiar distinction between a ministerial duty the performance of which may be compelled by writ of mandamus and a discretionary duty not thus compellable.<sup>72</sup> A case which originated in Oklahoma asserts the right of federal officials to invoke equitable relief against the enforcement of grossly unfair taxation of Indian lands.<sup>73</sup> Another case repeats the familiar doctrine that the power of removal, in the absence of statutory provision to the contrary, is an incident of the power to appoint and that the power to suspend is in turn an incident of the power to remove.<sup>74</sup>

possible only when a full record is preserved of the essentials on which the executive officers proceed to judgment. For failure to preserve such a record for the information, not less of the commissioner of immigration and of the Secretary of Labor than for the courts, the judgment in this case must be reversed. It is better that many Chinese immigrants should be improperly admitted than that one natural born citizen of the United States should be permanently excluded from his country." The practice indicated in *Chin Yow v. United States*, 208 U. S. 8, is specifically "approved and adopted."

<sup>70</sup> *White v. Chin Fong*, 253 U. S. 90. On the rights of resident aliens see further *United States v. Wong Kim Ark*, 169 U. S. 349.

<sup>71</sup> 252 U. S. 376.

<sup>72</sup> *Houston v. Ormes*, 252 U. S. 469, decided April 19, in which it was held that a suit against treasury officials to establish an equitable lien upon a fund appropriated by Congress for payment to a specified person is not a suit against the United States, being one to compel the performance of a ministerial duty; and *United States ex rel. Alaska Smokeless Coal Co. v. Lane*, 250 U. S. 549, in which the court refused a mandamus to the secretary of the interior to compel him to approve and pass applications for certain Alaska coal claims.

<sup>73</sup> *United States v. Osage County*, 251 U. S. 128. See in the same connection *Heckman v. United States*, 224 U. S. 413.

<sup>74</sup> *Burnap v. United States*, 252 U. S. 512, citing *ex parte Hennen*, 13 Pet. 230, and other familiar precedents.

United States v. North American Transportation and Trading Company<sup>75</sup> establishes that when the government appropriates private property for public use under legislative sanction but without instituting condemnation proceedings, it impliedly promises to pay therefor and may be sued on its promise in the Court of Claims. Calhoun v. Massey<sup>76</sup> sustained the clause of the Omnibus Claims Act of March 4, 1915, which limits the compensation of attorneys in the prosecution of claims against the United States to twenty per cent of the amount collected, any contract to the contrary notwithstanding. Another case emphasizes the plenary authority of Congress over unincorporated territories.<sup>77</sup>

#### VII. STATUTORY CONSTRUCTION

The most significant case under this heading is that of the Federal Trade Commission v. Gratz,<sup>78</sup> which involved the important question of the meaning of the term "unfair methods of competition in commerce," as used in the Act of September 6, 1914. The court held that "it is for the courts and not the commission ultimately to determine" the content of these words, and further that "they are clearly unapplicable to practices never before regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly." Upon this basis the court pronounced unfounded a complaint of the commission against respondents for refusing to sell cotton ties to purchasers declining to take a corresponding amount of cotton bagging. Justices Brandeis and Clarke dissented on the ground, stated by the former, that the only question before the court was whether, on the facts found by the commission, the method of competition condemned by it could be reasonably held to be unfair.<sup>79</sup>

<sup>75</sup> 253 U. S. 330.

<sup>76</sup> 253 U. S. 170.

<sup>77</sup> Public Utility Comrs. v. Yuchauti and Co., 251 U. S. 401.

<sup>78</sup> 253 U. S. 421.

<sup>79</sup> Justice Brandeis cites the power vested in the Interstate Commerce Commission to determine whether a preference granted by a railroad to a shipper or locality falls within the prohibition of "undue preferences." See Pennsylvania Co. v. United States, 236 U. S. 361.

Two much touted cases under the Sherman Act,<sup>80</sup> in seeming imitation of the Irishman's twins, who reciprocally drowned out each other's cries so that total silence reigned, cancel one another, and thus leave us in our original Stygian darkness as to the practical import of that famous statute. One case under the LaFollette Act<sup>81</sup> informs us that seamen on foreign vessels are entitled, the same as seamen on American vessels, to demand and receive at any American port of lading or delivery one-half of the wages they already earned. The decision is evidently based on the assumption that—as the late Judge Gaynor once remarked—the act “means just what it says.” More surprising is a holding that the Adamson Act does not in certain circumstances, forbid a contract for services at less price than the rates laid down in the act.<sup>82</sup> The case is further interesting for the summary statement of Justice Holmes of what was held in *Wilson v. New*.<sup>83</sup>

<sup>80</sup> *U. S. v. U. S. Steel Corporation*, 251 U. S. 417, and *U. S. v. Reading Co.*, 253 U. S. 26. The decision in the earlier case was rendered by only four justices, Justices McReynolds and Brandeis not participating and Justices Day, Pitney and Clarke dissenting. In the Reading case the Chief Justice and Justices Holmes and Van Devanter dissented. Justice McKenna, who wrote the opinion in the Steel Corporation case, has thus the distinction of being the only member of the court to approve of both decisions. A third case arising under the act was *U. S. v. Shrader's Sons*, 252 U. S. 85, in which it was held that agreements to control resale prices violate the act, but that a manufacturer may nevertheless, refuse to deal with one who has failed to follow resale prices specified by him. The decision thus embraces in one holding *Miles Medical Co. v. Park and Sons*, 220 U. S. 373, and *U. S. v. Colgate Co.*, 250 U. S. 300.

<sup>81</sup> *Strathearn S. S. Co. v. Dillon*, 252 U. S. 348.

<sup>82</sup> *Fort Smith and W. R. Co. v. Mills*, 253 U. S. 206. The agreement in question was between the receiver of an insolvent road and employees.

<sup>83</sup> The passage is as follows: “In *Wilson v. New*, 243 U. S. 332, 61 L. ed. 755, L.R.A.1917E, 938, 37 Sup. Ct. Rep. 298, Ann. Cas. 1918A, 1024, it was decided that the act was within the constitutional power of Congress to regulate commerce among the states; that since, by virtue of the organic interdependence of different parts of the Union, not only comfort but life would be endangered on a large scale if interstate railroad traffic suddenly stopped, Congress could meet the danger of such a stoppage by legislation, and that, in view of the public interest, the mere fact that it required an expenditure to tide the country over the trouble would not, of itself alone, show a taking of property without due process of law. It was held that these principles applied no less when the emergency was caused by the combined action of men than when it was due to a catastrophe of nature; and that the expenditure required was not necessarily unconstitutional because it took the form of requiring the railroads to pay more, as it might have required the men to take less, during the short time necessary for an investigation ordered by the law.”

Construction of the federal Employers' Liability Act has continued along the broad lines originally laid down by the court, and with the same diversity of result. When the act comes into competition with less liberal state laws a broad construction of it is beneficial, but when the contrary is the case—as it usually is nowadays—the result also is contrary.<sup>84</sup> The remedy, of course, lies with Congress. Finally, we learn that sheep are "cattle" within the meaning of section 2117 of the Revised Statutes, it having been so held by the courts and the administrative authorities for fifty years.<sup>85</sup> The decision is commended to the attention of the author of "Pigs is Pigs."

## B. QUESTIONS OF STATE POWERS

### I. PUBLIC PURPOSE IN TAXATION

The most important cases reviewing state laws have arisen in connection with taxation, and of these the most significant is that of *Green v. Frazier*,<sup>86</sup> in which the legislative program of the nonpartisan league of North Dakota, carrying with it such enterprises as a state bank, a state warehouse, elevator and flour mill system, and a state home building project, was sustained against the objection that it sought to authorize taxation for purposes not public, and therefore the

<sup>84</sup> The cases are as follows: *Southern P. Co. v. Industrial Accident Commission*, 251 U. S. 259: The work of an electric lineman in wiping insulators on one of the main electric cables of an interstate railway carrier was so directly connected with interstate commerce as to render the state law inapplicable. *Philadelphia and Reading Railway Company v. Hancock*, 253 U. S.: A member of a train crew operating a train of loaded coal cars from colliery to freight yard, both within the state was engaged in interstate commerce within the meaning of the federal act, although his duties never took him outside the state, it being shown that the ultimate destination of some of the cars was a point outside the state. *Erie Railroad Company v. Collins*, 253 U. S. 77: An employee of an interstate railway was engaged in interstate commerce within the meaning of the federal act, while starting the gasoline engine at a pumping station, which engine was used to pump water to be supplied to locomotives in whatever commerce engaged. *Erie Railroad Company v. Szary*, 253 U. S. 86: An employee of an interstate railway was engaged in interstate commerce within the meaning of the federal act when, having sanded the last of a series of locomotives and carried the ashes from the drying stove to the ashpit across the tracks, he was struck by a passing locomotive while on the way to get a drink of water.

<sup>85</sup> *Ash Sheep Co. v. United States*, 252 U. S. 159.

<sup>86</sup> 253 U. S. 233.



taking of property without due process of the law. The court recited the fact that this rather ambitious program had been sanctioned "by the united action of the people of the state, its legislature, and its courts." For the rest, said Justice Day, who spoke for the unanimous court, "with the wisdom of such legislation and the soundness of the economic policy involved, we are not concerned. Whether it will result in good or harm is not within our province to inquire."<sup>87</sup>

## II. TAXATION OF NONRESIDENTS

The conspicuous success, from the point of view of the tax-gatherer, at any rate, of the national income and inheritance taxes has stimulated the cupidity of the states and has brought them into frequent contact with the "privileges and immunities clause" of article 4 of the Constitution.<sup>88</sup> In *Maxwell v. Bugbee*<sup>89</sup> it was ruled that a graduated inheritance tax law, requiring that the rate of the tax be determined in the case of nonresident decedents by the total amount of property of such decedents both within and without the state was valid, although in the case of resident decedents the rate is determined by the amount of the property held within the state alone. The decision is based, so far as the "privileges and immunities clause" is concerned, on the proposition that the difference in the method of taxation "rests upon residence and not citizenship." The question whether it was fair to make it rest upon this basis is unfortunately left unanswered, wherefore three judges dissented. More satisfactory is the decision in *Shaffer v. Carter*,<sup>90</sup> holding that a state may tax nonresidents upon incomes derived from business done or property owned in the state and may confine their deductions from gross incomes to losses sustained in the state, though in the case of residents it allows all losses to be deducted. The difference thus made, the court points out, is not

<sup>87</sup> The doctrine of "public purpose" was introduced into the jurisprudence of the Supreme Court by Justice Miller, who brought it from Iowa, and was originally based on "general principles." See *Loan Asso. v. Topeka*, 20 Wall. 665. Later it was based on the "due process" clause of the Fourteenth Amendment: *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 155. The instant case was preceded by *Jones v. Portland*, 245 U. S. 217, where the court sustained an act of the state of Maine authorizing the establishment of municipal fuel yards.

<sup>88</sup> Article 4, section 2, says: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

<sup>89</sup> 250 U. S. 525.

<sup>90</sup> 251 U. S. 552.

unfairly discriminatory, since residents are taxed on their net incomes from whatever source derived, whether within or without the state. Similarly *Travis v. Yale and Towne Manufacturing Co.*,<sup>91</sup> where it is further ruled that a state may legitimately confine taxation at the source to nonresidents, but that denial to nonresidents of the personal exemptions which are granted citizens is a denial to the former of privileges and immunities enjoyed by the latter, meets the demands of "the rule of reason."

### III. TAXATION AND THE FOURTEENTH AMENDMENT

Several cases point out that the Fourteenth Amendment does not forbid double taxation any more than it forbids doubling the amount of the tax, short of confiscation.<sup>92</sup> A state may therefore tax its own corporations in respect of stock held by them in other domestic corporations, and this even though unincorporated stockholders are exempt.<sup>93</sup> Likewise a state may tax a corporation organized under its laws upon the value of its outstanding capital stock, although the corporation's property and business are entirely in another state.<sup>94</sup> Also a state may tax income received by residents from securities held for their benefit in another state.<sup>95</sup> On the other hand, the exemption of domestic corporations doing business without the state, from an income tax which domestic corporations doing business both within and without the state have to pay upon the proceeds of their total business, constitutes unfair discrimination against the latter class of corporations.<sup>96</sup> Finally *Wallace v. Hines*<sup>97</sup> points out some definite limitations to the

<sup>91</sup> Amendment Fourteen, section 1, reads, in part, as follows: "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These clauses were also invoked in the cases just reviewed in connection with article 4, section 2.

<sup>92</sup> 252 U. S. 60.

<sup>93</sup> *Ft. Smith and W. R. Co. v. Ark.*, 251 U. S. 532. Four justices dissented, without opinion.

<sup>94</sup> *Cream of Wheat Co. v. Grand Forks County (No. Dak.)*, 253 U. S. 325. The decision should be compared with *Union Refrigerator Transit Co. v. Ky.*, 199 U. S. 194.

<sup>95</sup> *Maguire v. Trefrey*, 253 U. S. 12.

<sup>96</sup> *Royster Guano Co. v. Va.*, 253 U. S. 412.

<sup>97</sup> 253 U. S. 66. The headnote of the case furnishes us the important details:

"A state may not, consistently with the commerce and due process of law clauses of the Federal Constitution, fix the value of the property of foreign in-

application of the "unit of use" rule in the taxation by a state of foreign interstate railway companies doing business in the state.<sup>98</sup>

#### IV. REGULATION OF PUBLIC UTILITIES

Several cases dealing with the regulatory powers of the states in relation to public utilities reiterate or extend familiar principles, in interpretation of the "due process of law" clause of the Fourteenth Amendment, to wit: (1) In all cases where maximum rates set by a state public service commission are claimed by an owner to be confiscatory, the state must provide a fair opportunity of submitting the issue to a judicial tribunal for determination upon its own independent judgment of both the law and the facts.<sup>99</sup> (2) Every part of a railway system over which a passenger is entitled to ride must be included in the computation to determine whether a given rate is profitable, and the passenger service, including sleeping car, parlor car and dining car service, must be treated as a whole.<sup>100</sup> (3) Railway companies may not be compelled by a state administrative order to install cattle weighing scales at stations to which cattle are shipped, it having been shown that such scales have no direct part in transportation and indeed have come to be used, where they have been installed, not by shippers

interstate railway companies for the purpose of levying a special excise tax upon the doing of business in the state by taking the total value of the stock and bonds of each railway company and assessing the proportion of this value that the main track mileage bears to the main track of the whole line, where, by reason of topographical conditions, the cost of the lines in that state was much less than in other states, and the great and very valuable terminals of the railways are in other states, and where the valuations as made include such items as bonds secured by mortgage of lands in other states, a land grant in another state, and other property that adds to the riches of the corporation, but does not affect that part of the railway in the state."

<sup>98</sup> For other cases dealing with the taxing power of the states, see (v), just below.

<sup>99</sup> *Ohio Valley Water Co. v. Ben Avon Borough et al.* 253 U. S. 287. The principal cases cited for the decision were *Missouri P. R. Co. v. Tucker*, 230 U. S. 340, and *Wadley So. R. Co. v. Ga.*, 235 U. S. 651. The dissenting opinion of Justice Brandeis, for himself and Justices Holmes and Clarke, is based on the different rule which obtains for the findings of the interstate commerce commission. See *Interstate Com. Comsn. v. Union P. R. Co.*, 222 U. S. 531. In *Oklahoma Operating Co. v. Love*, 252 U. S. 331, decided March 22, a rate enforcing penalty clause was set aside, on the basis of *Ex parte Young*, 209 U. S. 123. The decision was unanimous.

<sup>100</sup> *Groesbeck v. Duluth, S. S. and A. R. Co.*, 250 U. S. 607.

but by buyers and sellers of cattle.<sup>101</sup> (4) A milling company cannot be compelled to continue the public operation of a railroad at a loss; if the railroad continues to exercise its charter rights, it may be required to perform its charter obligations, even at a loss, but it is free to stop its losses by stopping its business.<sup>102</sup> (5) An oil pipe line, constructed solely to carry oil for particular producers under private contract, cannot be converted into a public utility by legislative fiat, otherwise private property might be taken without just compensation; but a pipe line voluntarily devoted by the owner to the use of the public is a public utility and subject to regulation as such.<sup>103</sup> (6) If a city wishes to clear space for the construction of a street lighting system of its own by removing the instrumentalities of a privately owned system occupying the streets under legal franchise, it must make compensation for the rights appropriated, since it is not acting for the public health, peace or safety, but in a proprietary or quasi-proprietary capacity.<sup>104</sup>

#### V. POLICE POWER, EMINENT DOMAIN

Outside the cases just mentioned, the "due process of law" clause furnishes the basis of decision in surprisingly few cases. From one such case we find that the state may abolish the defence of contributory negligence, not only in employers' liability cases, but generally.<sup>105</sup> From another we learn that the Fourteenth Amendment does not require a state to make loss of earning power the sole basis for a statutory compensation scheme for workmen who are injured without fault on the part of the employer, and that, accordingly, whether allowance should be made for facial or head disfigurement is a question for the state alone to determine.<sup>106</sup> Still another decision upholds the right of the state to forbid persons from soliciting employment in the prose-

<sup>101</sup> *Great Northern R. Co. v. Cahill*, 253 U. S. 71, decided on the basis of *Great Northern R. Co. v. Minn.*, 238 U. S. 340.

<sup>102</sup> *Brooks Seanon Co. v. R. R. Comsn.*, 251 U. S. 560, citing particularly *Northern P. R. Co. v. No. Dak.*, 236 U. S. 585.

<sup>103</sup> *Hays v. Seattle*, 251 U. S. 233.

<sup>104</sup> *Los Angeles v. Los Angeles Gas and E. Corp.*, 251 U. S. 32. The case should be compared with *Hardin-Wyandot Lighting Co. v. Upper Sandusky*, *ibid.*, 173. For the origin of the distinction here made between different branches of the police power, see *New Orleans Gas Co. v. La. Light Co.*, 115 U. S. 650.

<sup>105</sup> *Chicago, R. I., and P. R. Co. v. Cole*, 251 U. S. 54.

<sup>106</sup> *New York C. R. Co. v. Bianco*, 250 U. S. 596.

cution or collection of claims, including claims for personal injury;<sup>107</sup> while another reiterates familiar doctrine with reference to the power of eminent domain. The necessity and expediency of a taking where the purpose is public are legislative questions, and all that due process of law requires is that the owner have opportunity to be heard on the matter of compensation and that the compensation awarded be paid without unreasonable delay, not necessarily before the taking.<sup>108</sup> Several special assessment cases add little to learning on that topic.<sup>109</sup>

#### VI. THE "COMMERCE" CLAUSE

In enforcing the commerce clause as a limitation on the taxing-power of the states, the court finds a surprising difference between soft drinks and gasoline, with the result that, while a nonresident manufacturer of the former may be required to take out a wholesaler's license for the privilege of selling goods brought across state lines and delivered in original unbroken cases,<sup>110</sup> a tax on the business of selling gasoline in the tank cars or other original packages in which it was brought from without the state is void.<sup>111</sup> It is also under the commerce clause that a Jim Crow car law was sustained against a company whose principal business is the carriage of persons across the Ohio River between Cincinnati and Kentucky towns; but it must be admitted, that the dissenting opinion of Justice Day, for himself and Justices Van Devanter and Pitney, has much the better argument.<sup>112</sup> Another decision sustains the right of a state to stipulate the rates at which natural gas transmitted from without the state shall be furnished to

<sup>107</sup> *McCloskey v. Tobin, Sheriff (Texas)*, 252 U. S. 107. As Justice Brandeis remarks in his opinion, "The evil against which the regulation is directed is one from which English law has long sought to protect the community through proceedings for barratry and champerty."

<sup>108</sup> *Bragg v. Meaner*, 251 U. S. 57.

<sup>109</sup> *Branson v. Bush*, 251 U. S. 182; *Farncomb v. Denver*, 252 U. S. 7; *Goldsmith v. Prendergast Construction Co.*, *ibid.*, 12.—In *Sullivan v. Shreveport*, 251 U. S. 169, a municipal ordinance requiring street cars to be operated by both motorman and conductor during certain hours of the day was sustained. In *Dunbar v. New York*, *ibid.*, 516, a provision of the municipal charters imposing a lien on landlord's premises for water supplied by city to tenant was upheld.

<sup>110</sup> *Wagner v. Covington*, 251 U. S. 95, citing *Brown v. Houston*, 114 U. S. 622.

<sup>111</sup> *Askren v. Continental Oil Co.*, and accompanying cases, 252 U. S. 444. The decision cites *Standard Oil Co. v. Graves*, 249 U. S. 389, where an act of California was set aside as not an inspection law.

<sup>112</sup> *South Covington and C. Street R. Co. v. Ky.*, 252 U. S. 399.

local consumers, but only till Congress acts in the exercise of its superior authority<sup>113</sup>—a qualification which obviously opens up interesting possibilities. Several cases grew out of conflicts between state and federal regulations, but disclose no new principle.<sup>114</sup>

#### VII. "OBLIGATION OF CONTRACTS," "FULL FAITH AND CREDIT"

Of the ten cases which invoked the "obligation of contracts" clause, at least half illustrate the familiar doctrine of "strict construction" laid down in the Charles River Bridge case in 1837.<sup>115</sup> Indeed the

<sup>113</sup> *Pennsylvania Gas Co. v. Public Serv. Comsn.*, 252 U. S. 23.

<sup>114</sup> *Pennsylvania R. Co. v. Public Serv. Comsn.*, 250 U. S. 566 (State cannot regulate the use of caboose cars and mail cars, as end cars, the interstate commerce commission having done so); *Postal-Telegraph Cable Co. v. Warren-Goodwin Lumber Co.*, 251 U. S. 27 (State cannot invalidate contract limiting liability of telegraph company for error in sending unrepeatable interstate message, Congress having occupied the field by the Act of June 18, 1910). See also note 84, *supra*.

<sup>115</sup> *Bank of Oxford v. Love*, 250 U. S. 605: The state has the right to provide for reasonable bank examination by state officers of a bank which has the power under its charter to make rules not in conflict with the Constitution of the United States or of the state. *Oklahoma R. Co. v. Severns Paving Co.*, 251 U. S. 104: A company which is obliged by its charter to pay for the paving of certain portions of the streets occupied by it may also be assessed by the municipality for other paving costs for benefits received. *Pacific Gas and Electric Co. v. Sacramento*, 251 U. S. 22: A street railway company may be required to sprinkle the surface of the streets occupied by its lines between the rails and tracks and for a sufficient distance beyond to keep the dust from being raised by the operation of its cars. *Hardin-Wyandot Lighting Co. v. Upper Sandusky*, 251 U. S. 773: The state may require chartered electric companies to obtain the consent of municipalities before erecting poles and wires in the streets thereof. *Milwaukee Electric R. & Light Co. v. Wisconsin*, 252 U. S. 100: A street railway company may be compelled to pave in asphalt upon a concrete foundation, though its charter required, in the absence of agreement with the city, only the same material as that last used, which in this instance was macadam. *C. B. Munday, Trustee v. Wisconsin Trust Co.*, 252 U. S. 499: The obligation of contracts clause applies only to legislation subsequent in time to the contract alleged to be impaired. *Producers Transportation Co. v. R. R. Commission*, 251 U. S. 228: A common carrier cannot, by making contracts for future transportation, etc., prevent the state from exercising its power to regulate such carrier's rates. *Hays v. Seattle*, 251 U. S. 233: A statute which has the effect of repudiating an unfulfilled contract previously made with the state does not impair the obligation of the contract, since the obligation still remains and forms the measure of the contractor's right to recover damages from the state. *Central of Georgia R. Co. v. Wright*, 250 U. S. 519, sustained a tax exemption of a leased road on facts peculiar to the case. There were four dissents. *Travis v. Yale and Towne Mfg. Co.*, *supra*, was also argued to some extent under the "obligation of contracts" clause.

remarkable thing about most of these cases is that they ever came into court. Probably learned counsel would avail themselves of Falstaff's apology for purse-taking: "Tis no sin for a man to labor in his vocation." The single case involving the "full faith and credit" clause<sup>116</sup> establishes that a state cannot escape its obligation to enforce a judgment rendered by the court of another state by the easy device of denying jurisdiction of the subject matter to its courts.<sup>117</sup>

In conclusion, a few statistics for the term may be interesting. The court handed down opinions in 176 cases, of which 80, more or less, involve constitutional issues or near-constitutional issues. As writers of opinions for the court Justices Day and Holmes tied, each having 25 to his credit, while Justice Van Devanter, whose record is poorest in this respect, wrote but 11. Most of the others averaged about 20 each. Dissents were recorded in about 40 cases. Justice Clarke is apparently the most obstinate member of the bench, having notified his dissent in 19 cases, though Justice Pitney with 17 dissents is a close second. The most complaisant member, on the other hand, is the Chief Justice, who appeared as dissentient but 5 times. The constitutional cases frequently involved more than one topic of constitutional law. "Due process of law," in the sense of a general limitation to legislative power, was invoked in 30 cases, and in the procedural sense 7; the "commerce clause" in 11 cases, and always as restrictive of state power; the "obligation of contracts" clause in 10 cases. The most frequently recurring topic of all was, as usual, that of appeal and error, which sometimes drew constitutional issues in its wake, but usually of an uninteresting character. Aside from constitutional cases, those involving questions of statutory construction were most numerous and important.

<sup>116</sup> The clause reads: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

<sup>117</sup> *Kenney v. Loyal Order of Moose*, 252 U. S. 411, decided April 19. The same day was also decided *Canadian Northern Ry. Co. v. Eggen*, 252 U. S. 553 in which it was held that a provision of the Minnesota statutes denying jurisdiction over causes of action arising outside the state which have lapsed under the laws of the place of action, did not infringe the "privileges, and immunities" clause of article 4, provided the foreign limitation, though shorter than that of Minnesota, was not unduly short.

The outstanding result of the term's work for constitutional law is its emphasis upon the principle of the supremacy of national powers over conflicting state powers. This is the principle which Chief Justice Marshall labored so fruitfully, but which became obscured in the period following his chief-justiceship. In the field of commercial regulation it was definitely restored by the decision in the *Shreveport* case in 1916. This term it was reasserted in the field of the treaty-making power and in that of constitutional amendment. It is unlikely that it will ever again be lost to view.



## AMERICAN GOVERNMENT AND POLITICS

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**Notes on Congressional Procedure.** Rules of procedure in legislative bodies, once a matter of convenience, have now become weapons of political and personal warfare.<sup>1</sup> Nowhere is this more evident than in the American Congress. In the house of representatives individual members are ready to seize every opportunity afforded by the rules to make themselves prominent and embarrass those who have the pending measure in charge; and when action is to be taken by the house, guillotine is almost always used.<sup>2</sup> The proposed program is reported by the committee on rules and the house proceeds to a cut and dried decision determined upon by the leaders. There is no real deliberation. In the senate, the situation is different; inability to limit debate enables obstruction to be successfully resorted to by a few senators. For example, in the last session the budget legislation failed of passage on account of a filibuster, but the senate, while not reduced to the same degree of impotence as the house, is, nevertheless, very materially under the domination of the steering committee.<sup>3</sup>

<sup>1</sup> How the change came about in England has been very well described in A. A. Baumann, *Persons and Politics of the Transition*, pp. 27-30.

<sup>2</sup> "In the earlier Congresses," wrote Speaker Reed, "Members acted with the utmost deference to the wishes of the House. They refrained from making speeches, and withdrew motions if the sense of the House seemed manifestly against them. With such deference on the part of each member to the wishes of all, the House was slow to abridge the right of debate." *North American Review*, Vol. 150, p. 389. Calhoun declared that the previous question had been ordered only four times in twenty years. The changes in the procedure of the house of representatives are fully explained in Alexander, *History and Procedure of the House of Representatives*, ch. x.

<sup>3</sup> See for example, Senator McCumber's speech on May 20, 1920, *Congressional Record*, p. 7921. Senator Kenyon said that he did "not recognize the right of any small assembly of men on either side of the Chamber, after bills have been reported from committees to the Senate, following full discussion and consideration, to say that such bills shall not be considered by the Senate except as they may say." Senator Johnson spoke to the same effect. The chief objection seemed to be that the steering committee would give no opportunity for considering the Nolan-Johnson Minimum Wage Bill and legislation designed to regulate the meat industry. Senator McCumber made a spirited defence of the work of the committee.

Congressional procedure is in such an unsatisfactory state that it may be worth while to discuss several phases of the work of the house of representatives during the session of 1919-20.

*Keeping a Quorum.* So much time was lost in roll calls during the session that there was some discussion among members of the house of representatives of reducing the number which must be present in the committee of the whole to constitute a quorum. The Constitution provides that a majority of the members of the house is necessary for a quorum, but most of the business is transacted in the committee of the whole and then only 100 members must be present. During the last session of Congress more than 100 points of no quorum required the loss of at least 50 working hours, and during the present Congress there have been 425 roll calls—the equivalent of 30 legislative days. Snap votes do not occur in the house of representatives; if a huge appropriation bill is passed with a score of members on the floor—and this frequently happens, no one making the point of no quorum—it is certain that it would be passed with everyone present. Consequently roll calls are forced to consume time, as a personal retaliation by some member whose amendment has not been accepted by the chairman of the committee in charge of the pending bill, or to get an audience for a speech.

Adjournment, also, was repeatedly forced during the last session on account of lack of a quorum. The *Record*, for example, shows that in a great many cases as the clock approached six, a Democratic member said: "Mr. Chairman, I think we need a new shift and make the point of no quorum." Sometimes the majority leaders accepted the challenge, had the roll called, and continued business for a while; more frequently they were unwilling, at such a late hour, to attempt to secure the necessary number of members and thus many times the wishes of one representative forced the adjournment.

The proposal which has been most discussed is to make fifty a quorum in the committee of the whole. This number can almost always be secured from the handful which remains in attendance on the floor of the house and those who loiter in the cloak rooms.<sup>4</sup> A better solution would seem to be an electric voting system or some simpler method of

<sup>4</sup> In the house of commons 40 is a quorum, and if this number is not present, the house adjourns. The six standing committees appointed under the 1919 rules of the house of commons (see *American Political Science Review*, Vol 14, p. 471), consist of from 40-60 members, 20 being a quorum. One important measure—the Plumage Bill—failed of passage at the last session of parliament because a quorum could not be kept in the committee.

recording the house than by having every name droned twice by a clerk. That the problem needs to be mooted is in itself a commentary on procedure in the house of representatives.

A small-sized filibuster—which was part of the celebration of Lincoln's birthday—shows what absurdities the procedure and temper of the house of representatives are sometimes responsible for. The Gettysburg speech had been read, and an hour or so had been consumed in listening to addresses on the life and work of Lincoln. Then the house resumed consideration of the Agricultural Appropriation Bill in committee of the whole house on the state of the union, with debate under the five-minute rule.

Towards the close of the session the point of no quorum was made on the ground that a new shift of members was necessary—a method frequently used, as already suggested, to force the leaders of the house to consent to an adjournment. This consent was not given and the roll was called. The chairman of the agricultural committee then moved that debate on the section under discussion close in ten minutes, but apparently the section was of some interest and several gentlemen desired to talk. This small minority proceeded to make the house divide eight times, with tellers appointed in each case, before this simple question of closing the debate could be determined. Amendments were offered to close debate in thirty minutes, twenty-five minutes, and at once, the latter amendment being carried. Three motions were made that the committee rise and tellers were in each case ordered. The last division disclosed only ninety-nine gentlemen voting, but the chairman counted himself and thus was able to avoid a point of no quorum and a roll call. The section went through unamended, with no further discussion, the committee rose, and the house adjourned.<sup>5</sup>

*Debate under the Five-Minute Rule.* Although on important decisions, the house is absolutely controlled as to method and result by a few leaders, in one respect, at least, the members have ample freedom and are not reluctant to take advantage of it. They insist on consuming a great deal of time in debate under the five-minute rule. During the last session Congressman Madden made an examination of the *Congressional Record*, as a result of which he declared that the time spent in general debate was decreasing while that under the five-minute rule was increasing; formerly, the membership apparently trusted the ability and wisdom of appropriation committees which framed their bills after weeks of study and did not wish to act independently unless some important

<sup>5</sup> *Congressional Record*, February 12, 1920, pp. 2897-2898.

question of policy was involved. Formerly, also, debate under the five-minute rule on items in appropriation bills was participated in principally by members of the committee; now it is indulged in generally and ninety per cent of it is absolutely futile. The chief result is that the chairman of the committee having the measure in charge is forced to be on the lookout against hostile amendments and that much time is wasted.<sup>6</sup>

Taking the Fifty-eighth and Sixty-fourth Congresses and fourteen supply bills, Mr. Madden calculated that 84 additional working days—or three months—were required for the passage of the appropriations. "Surely one is warranted in the conclusion," he said, "that a potent reason for the increasing length of the sessions of Congress is too much 'liberalizing' of debate under the *pro forma* amendment;"<sup>7</sup> most of this

<sup>6</sup> Mr. Madden made an interesting analysis of the time consumed under the five minute rule on several appropriation bills as follows: Legislative Bill: Fifty-seventh Congress, 2 days; Fifty-eighth, 2 days; Sixtieth, 2½ days; Sixty-second, 5½ days; Sixty-third, 9½ days; Sixty-fourth, 6½ days. Agricultural Bill: Fifty-seventh, 1 day; Fifty-eighth, 1 day; Sixtieth, 5½ days; Sixty-second, 8 days; Sixty-third, 6½ days; Sixty-fourth, 12 days. Indian Bill: Fifty-seventh, 1½ days; Fifty-eighth, 1½ days; Sixtieth, 2 days; Sixty-second, 3 days; Sixty-third, 3½ days; Sixty-fourth, 4 days. (A legislative day was reckoned at five hours.)

When it is remembered that the rules of the British house of commons (proposed for the session of 1919) sought to reduce the time allowed for the business of supply from 20 to 12 days (see *The Constitutional Year Book*, 1920, pp. 158, 462, and *American Political Science Review*, Vol. 13, p. 253) the time required by the house of representatives seems extremely liberal, for Mr. Madden considered only 3 of the 14 appropriation bills. A comparison of different Congresses, however, should take into consideration the fact that the appropriations have vastly increased in amount.

<sup>7</sup> Mr. Madden gave the following figures on the increasing lengths of congressional sessions:

"During the Fifty-eighth, Fifty-ninth, Sixtieth, and Sixty-first Congresses, when the Republicans were in control, with Mr. Joseph G. Cannon, Speaker, the Congress was in session a total of 1,164 days, an average for each Congress of 291 days. The four so-called 'long' sessions during this period occupied 736 days, or an average of 184 days for each long session.

"During the Sixty-second, Sixty-third, Sixty-fourth, and Sixty-fifth Congresses, when the Democrats were in control of the House, with Mr. Champ Clark, Speaker, the Congress was in session a total of 2,156 days, an average for each Congress of 536 days. The four so-called 'long' sessions during this period occupied 1,227 days, or an average of 307 days for each 'long' session.

"Thus it will be seen that Congress was in session 992 days, or almost three years longer during Mr. Clark's Speakership than Mr. Cannon's.

"Not once during the period when the Democrats were in control did they succeed in passing all the appropriation bills by the beginning of the fiscal year

is foreign to the pending question and, as before stated, in ninety per cent of the cases the bill is unamended.<sup>8</sup>

In order to show the absurd range which debate very often takes it may be worth while to outline briefly the proceedings on January 29, 1920, an urgent deficiency bill (H. R. 12046) being under discussion in the committee of the whole house on the state of the union.

for which the bills provided. This was due largely, in my judgment, to a misuse of the privilege of debate under the five-minute rule." *Congressional Record*, January 6, p. 1172.

In this connection the following sessional statistics of the house of commons are interesting (*The Liberal Year Book for 1920*, p. 138):

SESSION OF	DAY OF MEETING	DAY OF PROROGATION	DATE HOUSE SAT	DIVISIONS	ADJOURNMENT OF HOUSE MOVED	CLOSURE	
						Times moved	Times carried
1901	Jan. 23	Aug. 17	118	482	9	83	74
1902	Jan. 16	Dec. 18	181	648	14	96	81
1903	Feb. 17	Aug. 14	115	263	3	20	13
1904	Feb. 2	Aug. 15	124	341	7	69	51
1905	Feb. 14	Aug. 11	114	384	9	61	45
1906	Feb. 13	Dec. 21	156	501	5	112	61
1907	Feb. 12	Aug. 28	181	466	3	66	46
1908	Jan. 29	Dec. 21	171	468	2	63	40
1909	Feb. 16	Dec. 3	179	920	2	157	135
1910	Feb. 15	Nov. 28	102	159	0	28	13
1911	Jan. 31	Dec. 16	172	451	1	90	55
1912-13	Feb. 14	Mar. 7, '13	206	805	6	107	67
1913	Mar. 10	Aug. 15	102	279	4	83	56
1914	Feb. 10	Sept. 18	130	214	3	46	25
1914-16	Nov. 11, '14	Jan. 27, '16	155	34	0	0	0
1916	Feb. 15	Dec. 22	127	67	0	0	0
1917-18	Feb. 7, '17	Feb. 8, '18	181	156	2	0	0
1918	Feb. 12	Nov. 21	113	95	1	0	0
1919	Feb. 4	Dec. 23	163	160	2	0	0

<sup>8</sup> For instances of the use of the point of order that appropriations were not authorized by law to strike out items of bills and to bar the addition of amendments on the ground that they were not germane, see Mr. Blanton's extension of remarks, *Congressional Record*, April 21, 1920, p. 6446 ff. These appropriations can be reinserted under the senate rules, however, and then the house is forced to accede to them. (For the new rules of the house which seek to prevent this see above, p. 671.) As has been said there is practically no amendment of appropriation bills except with the approval of the chairman of the committee having them in charge. The committee, furthermore, occupies most of the time during general debate—frequently with the discussion of irrelevant subjects—and debate under the five minute rule is in many cases shut off on a motion by the chairman of the committee. But for this form of guillotine Mr. Madden's 84 days would have been considerably increased.

Mr. Luce spoke for thirty minutes and was allowed to extend his remarks in the *Record*. He discussed the enormous waste of the war, variations of the index figure for production in the United States,<sup>9</sup> personal extravagance, the high cost of living, currency inflation, the Federal Reserve Act, and the way to deal with profiteers. Mr. Heflin revised and extended his remarks (of ten minutes) on the iniquities of Wall Street and the Republican Party. The conditions of the treasury and the proposed anti-sedition law were considered by Mr. Stevenson and Mr. Blanton; each was allowed ten minutes, but their remarks were extended and the latter used eight pages of the *Record* with quotations from the hearings before the house committee on the judiciary and a bitter attack on Mr. Gompers' war record. Congressman Blanton was very much interested in Mr. Gompers and spoke on him a number of times during the session.

Mr. Byrns (for the minority) and Mr. Good (for the majority) then discussed the bill for an hour in general terms and debate was begun under the five-minute rule. The first section of the bill to be considered related to the bituminous coal commission. Mr. Caldwell moved to strike out the last word and defended himself from the charge that, on the outbreak of the war, he was opposed to paying the soldiers as much as \$30 a month. This important question was also discussed by Mr. Little. Mr. MacGregor broadened the issue. He moved to strike out the *two* last words of the section and discussed the coal shortage in his neighborhood. Copies of the speech sent to his constituents would doubtless convince them that they were being adequately represented in Washington; certainly that their fears of being fuelless were sympathized with.

The chairman (of the committee of the whole) for some reason delayed recognizing Mr. Huddleston who retaliated by making a point of no quorum. Eighty-two members were present. A motion was made that the committee rise, but failed by 2 to 87. The delay in taking the vote and announcing the result afforded time for 16 additional gentlemen to come into the hall. They were at once counted and a quorum was present. Mr. Huddleston then spoke, with interruptions, on the soldiers' bonus. Mr. Good moved to close debate on the section.

<sup>9</sup> Economists will be interested to learn that this index figure varied as follows: 1913-100; 1914-104; 1916-109; 1917-112; 1918-113. No authority is given for the figures, and so it is doubtful whether Mr. Luce's index number will be a great find to the economists who are very anxious to have reliable production statistics.

The next paragraph related to the council of national defense. Four pages are taken up with the debate on whether the paragraph was subject to a point of order on the ground that the deficiency was anticipated rather than actual; but the chairman of the committee ruled that deficiency meant a deficiency in an appropriation heretofore made. Three pages of the *Record* give the report of a debate which resulted in a minor perfecting amendment, and the discussion for the rest of the day was held rather closely to the subject matter of the bill. Vocational rehabilitation had been reached, and members could and did talk about justice to the returned soldier rather than deficiency appropriations. It must have been an edifying day for the galleries but can it be said that the house of representatives is a deliberative body whose function it is to legislate?<sup>10</sup>

*Political Debate.* Political speeches are frequently made on the floor of the house of representatives or published in the *Record* without being delivered. Sometimes they are on national politics; more often they deal with the speaker's own legislative record and are an appeal for votes. Reprints can be obtained at cost from the government printing office and mailed to constituents free of postage. There are only two objections, neither very weighty, to such a procedure: (1) since no public business is pending or being discussed, members lay themselves open to the charge of advancing their personal and party interests at government expense (not an unusual situation in Congress), and (2) unanimous consent of the house is necessary both to speak and to extend remarks in the *Record*.

During the last session the leaders of the house found a way to obviate these two difficulties and to have a great deal of political debate. They had the house discuss the work of the select committee on expenditures in the war department (H. Res. 78). On December 13 the committee on rules reported a resolution permitting the house to debate a report from the select committee (House Report No. 487) for four hours, divided equally between the majority and the minority and the debate confined to the subject matter of the report.<sup>11</sup> On a point of no quorum the roll was called and then the speaker pro tempore (Mr.

<sup>10</sup> The full report of the proceedings on this day which is not exceptional, only typical, will be found in *Congressional Record*, pp. 2341-2369.

<sup>11</sup> It is a commentary on procedure in the house of representatives that this stipulation—debate to be confined to the subject matter—is very frequently made. And even so, the rule is not interpreted very strictly and is often openly ignored.

Hicks) ruled that a point of order against the resolution on the ground that it did not lead to the consideration of any proposed legislation or require any action by the house was not well taken. Immediately another point of no quorum disclosed only 125 members present and the roll was again called. During the thirty-four minutes of debate on the rule which followed, the roll was called three times on points of no quorum and once on a motion to adjourn with the yeas and nays recorded. In other words, six times as much time was spent in calling the roll as in debate. Discussion of the rule was continued until the next legislative day. During the twenty-six minutes of debate which remained, three roll calls were ordered, with a fourth on the adoption of the resolution. The four hours debate which the committee on rules proposal allowed ran over two days. Discussion was centered on eight war department contracts, out of 9553 which the committee had examined. It was asserted without contradiction that for the first time in history the house debated a report which required no affirmative action;<sup>12</sup> the purpose of the debate was purely political.

On March 5, 1920, the committee on rules again proposed that the house have a debate. The rule reported provided that the house should meet at 11 a.m., that there should be four hours of debate on another report from the committee on expenditures in the war department (House Report No. 637), and that three congressmen who were named in the rule should have leave to revise and extend their remarks without further permission from the house. It was doubtless feared that someone might object and that unanimous consent—which is the customary method of securing permission to publish unspoken speeches—would be refused. This was the first time, Congressman Clark, minority leader, declared, that the rules committee had undertaken to grant to a particular member the right to extend his remarks in the *Record*. It is not necessary to comment on a legislative assembly consenting to such a practice.

Debate on the rule was finished with only one roll call on its passage and the debate of four hours the next day—principally on the aircraft program and its failure—went its dreary way with only an initial point of no quorum and, later, a handful of members on the floor. But the report of the debate is voluminous and the reader has no way of telling what was said and what was inserted under leave to print.<sup>13</sup> Much of it was doubtless circulated during the campaign.

<sup>12</sup> See *Congressional Record*, December 13, 15, 16, pp. 547, 578, 689.

<sup>13</sup> *Ibid.*, March 5 and 6, pp. 4221, 4263.



But debates without action did not satisfy the majority leaders. They desired that the war department investigating committee should show more results. Consequently on April 12 a new system was tried to get political capital from the committee's work. The select committee itself was empowered<sup>14</sup> to report a resolution (No. 515; House Report 816) directing the Speaker of the house "to refer to the Attorney General of the United States the testimony taken before the Select Committee on Expenditures in the War Department on the subject of camps and cantonments, together with the report of the said Committee and the minority views on that subject, with the request that the Attorney General institute investigations before grand juries for the purpose of indicting and prosecuting such persons as are guilty of criminal conduct and to institute civil suits for the recovery of any Government funds which have been fraudulently or illegally paid on account of such emergency construction work."<sup>15</sup>

Four hours of debate with only two points of no quorum being finished, the resolution was adopted by a vote of 299 to 4. A motion to recommit was allowed, and this ordered the select committee to report a more specific resolution designating particular firms which the attorney general should designate. This motion failed by a vote of 130 to 169.<sup>16</sup>

*The Apotheosis of Guillotine.* The consideration of the bonus bill in the house involved a very important question of procedure and illustrated the fact that the house is not a deliberative body but is controlled by a few leaders. The Republican steering committee had considered various forms of closure and had apparently determined upon a rule limiting debate to five hours, preventing amendments, and allowing a single motion to recommit. There was a good deal of opposition to this, but the measure was finally forced through with the house even more effectively, although not so openly, gagged.

On May 29, 1920, the rules committee proposed a rule, "That it shall be in order for six legislative days, beginning May 29, 1920, for the Speaker to entertain motions of members of committees to suspend the rules under the provisions provided by the general rules of the House." The rules of the house provided that "the Committee on

<sup>14</sup> By H. Res. 517 from the committee on rules. This rule gave three members the right to revise and extend their remarks in the *Record*. See April 12, p. 5960.

<sup>15</sup> *Congressional Record*, p. 5964.

<sup>16</sup> *Ibid.*, April 13, p. 6033.

Rules shall not report any rule or order which shall provide that business under paragraph 7 of Rule XXIV (Calendar Wednesday) shall be set aside by a vote of less than two-thirds of the members present; nor shall it report any rule or order which shall operate to prevent the motion to recommit being made."

The point of order was made that the rules committee's proposal required a two-thirds vote so far as Calendar Wednesday was concerned and with respect to eliminating the motion to recommit was not privileged and must take its place on the calendar. Speaker Gillett made a ruling so doubtful that he was sustained only by a vote of 192 to 189 which, in view of the large Republican majority in the house, was rather remarkable.

"It seems to the chair," he said, "that the Committee on Rules is not permitted to do anything which directly dispenses with Calendar Wednesday or with the motion to recommit, but it can bring in a general rule, like the present one, which indirectly produces that result as a minor part of its operation.

"Of course this resolution is brought in, as we all know, on the anticipation that the House will adjourn next Saturday. If a resolution to adjourn should be brought in by the Committee on Rules and passed by the two Houses, that makes the suspension in order for the next six days; that would dispose of Calendar Wednesday and the motion to recommit. Would anyone contend that on that account it was out of order? The Chair thinks that this motion is not so directly aimed at the rule which provides for Calendar Wednesday and the motion to recommit as to make it out of order."<sup>17</sup>

Thirty minutes of debate to a side were allowed on the rule which was adopted by a vote of 220 to 165. Mr. Fordney immediately moved "that the rules be suspended and that the House pass the bill H. R. 14157, known as the soldiers' bonus bill." Twenty minutes a side were allowed on this, the rules were suspended and the bill passed by a vote of 289 to 92. Concerning this situation Congressman Mann, Republican; and one of the ablest parliamentarians in the house, had the following to say:

"Here is the situation: Congress has been in almost continuous session for more than a year. The Republican side of the House has had a reasonably large majority. If we say to the country, as we will if this resolution be passed, that the Republican majority in this House, with a year's time, has been unable to bring in legislation and

<sup>17</sup> *Congressional Record*, May 29, p. 8543.

perfect it where it is subject to amendment, it acknowledges its impotency and its incapacity. It will be called to your attention and to your constituents on every stump that the Republican majority of the House has not enacted much reconstructive legislation, and then it will be told in addition that the Republican majority of the House was afraid to enact legislation under ordinary rules and was incapacitated from following the ordinary practice. What will you answer when men say to you that a Republican majority in the House passes a revenue bill raising a billion and a quarter of dollars without a chance to amend it? No party in the history of the country has ever passed a revenue bill under suspension of the rules."<sup>18</sup>

The same form of guillotine was resorted to when the house of representatives considered the joint resolution terminating the state of war with Germany. The committee on rules reported (April 8) a special rule fixing debate on the peace resolution from eleven to five the next day.<sup>19</sup> At five o'clock the previous question was considered as ordered without any intervening motion except one to recommit. Amendments were impossible. The house had to take the resolution or leave it.

<sup>18</sup> *Ibid.*, May 29, p. 8546.

<sup>19</sup> *Ibid.*, April 8, p. 5336.

## LEGISLATIVE NOTES AND REVIEWS

EDITED BY W. F. DODD

**State Police.** During the last few years there has been considerable legislation relating to state police in widely distributed sections of the United States, and also in the Canadian provinces of Alberta and Manitoba. In addition to state agents for the enforcement of particular laws, such as those relating to labor or the protection of fish and game, there are now fifteen states with a small police force of a more general character.

Precedents for a centralized police are to be found in the gendarmes in the countries of continental Europe, the royal Irish constabulary, and (more closely resembling the recent developments in the United States) the Australian trooper police, dating from 1825, the Canadian mounted police, established in 1873, and the British South Africa police, organized in 1897. Similar forces of constabulary have also been established in the Philippine Islands and in Porto Rico.

In the United States, the Massachusetts district police, established in 1865 and reorganized in 1879, perform mainly detective functions. In South Carolina, a force of state constables was provided to enforce the state liquor laws in connection with the dispensary system (1896). Connecticut in 1903 also organized a small body of state detective police.<sup>1</sup>

The Texas rangers, organized in 1901, had more active functions, the suppression of disorder and the protection of the Mexican frontier. Similar bodies were established in Arizona in 1903, and in New Mexico in 1905. The Pennsylvania state constabulary, organized in the latter year, was a larger and more important force, whose success has had much to do with the recent legislation in other states.

In 1917, the New York state troopers were established,<sup>2</sup> and South Dakota provided for a state constabulary, composed of the sheriffs and deputy sheriffs, under a state sheriff appointed by the governor. In 1918, a South Carolina law provided for a force of county police in

<sup>1</sup> J. A. Fairlie, *Local Government in Counties, Towns and Villages*, p. 269; J. M. Mathews, *Principles of American State Administration*, p. 444.

<sup>2</sup> *American Political Science Review*, Vol. 11, p. 539 (1917).

one county. In 1919, state police forces were organized in Alabama, Tennessee, Connecticut, Michigan and West Virginia; and Pennsylvania and Texas reorganized the state constabulary and rangers.

In the southern states, three distinctly different police systems have been devised. In South Carolina, a rural police system was established, in 1918, for Greenwood County. All magistrates' constables were abolished, and their duties devolved upon the county police. The county is divided into three police districts, for each of which one policeman is appointed by the governor of the state, for a term of two years at a salary ranging from \$1100 to \$1200 a year. The county policemen are placed under the direction and control of the sheriff of the county "in all matters connected with their police duties."<sup>3</sup> The sheriff is required to confer and advise with the policemen at least once a month, and the policemen are required to make a weekly report to the sheriff. Under the general direction and control of the sheriff, it is the duty of the policemen "to patrol the entire county, especially the rural districts, and to prevent or detect and prosecute for all violations of the criminal law, making arrests for suspected crime whether upon view or immediate information or complaint, and report their acts and doings, and all known or suspected violators of the law to the sheriff once a week." Also, each policeman must patrol his own particular district at least twice a week and each policeman must be on duty at least ten hours every day. Furthermore, "they shall frequent railroad depots, stores and other places of a public character where disorder is probable, or vagrants may be loafing, or alcoholic liquors are sold or used, and as often as practicable, ride by houses that are off the public highways, and in lonely parts of the county, especially such as are without male protectors." They are especially to prevent drunkenness, boisterous conduct, obscene or profane language, carrying weapons contrary to law, trespassing on lands without the permission of the owner, gambling, vagrancy, and violation of the child labor law. The county police "shall have authority to summon the *posse comitatus* to assist in enforcing the law, and any citizen who shall fail to respond or render assistance, when so summoned, shall be guilty of a misdemeanor."

The Alabama state police as constituted by the legislature of 1919, is regulated in much the same manner as the state militia in the service of the United States. The governor is empowered to call "to his aid and to the aid of the local peace authorities, such number of police,

<sup>3</sup> South Carolina, *Session Laws* (1918), p. 741.

patrolmen, or police officers of any town or city as he may deem necessary, and to order them to the locality where needed, to preserve the peace, and arrest and prosecute according to law any persons violating the laws of the state."<sup>4</sup> The governor is thus authorized to call into the state service such local police "and any other persons" whom he might employ at any time when he has reason to suspect "at any place within the state, the outbreak of any riot, rout, tumult, insurrection, mob, or combination, to oppose the enforcement of the laws or to break the peace by force or violence which cannot be speedily suppressed or effectually prevented by the ordinary *posse comitatus* and peace officers."

Not only when the enforcement of the state laws are apt to be opposed, but also when the local municipal ordinances are apt to be violated, the governor may call into state service the local police to assist other local police officers when they cannot cope with the danger. "It shall be the duty of all police officers and patrolmen when called upon by the governor or directed by the city authorities to obey the orders and directions of the governor and of the city authorities and to proceed to the place where the services are needed." Such police "shall be deemed and treated as legal officers of the state and county where acting."

When called upon by the governor, the municipal officials are required to furnish policemen and send them to any locality that the governor may command. When in the opinion of the governor, this state police is not sufficient to master an emergency, "the governor may in his discretion employ such additional men as he may deem necessary to be sent to the locality where needed to preserve the peace." In his discretion, the governor may "place them under the orders and discretion of the sheriff of the county, or of the mayor of the city, if the locality of their service shall be in an incorporated town or city."

Local police in state service are to be paid on much the same principle as the national guard is paid while in the service of the United States. The Alabama act provides that "any person or official of a city failing, refusing or neglecting to comply with the orders or directions of the governor . . . shall be guilty of a misdemeanor," and "may be punished by imprisonment for not exceeding twelve months at hard labor for the county."

A state police force which is at once well organized and effectively distributed was created by the Tennessee legislature of 1919. It con-

<sup>4</sup> Alabama, *Session Laws* (1919), No. 170, p. 164.

sists "of not more than 600 regular officers, of the following numbers and grades: Ten district officers, one of whom shall be assigned by the governor to each of the congressional districts of the state; one county officer for each of the 96 counties of the state, and 494 sectional officers, to be appointed from the several counties as the governor may in his discretion think proper, and such special officers as may be necessary to be appointed to meet an emergency."<sup>6</sup>

All officers of the Tennessee state police are appointed and commissioned by the governor. All policemen are engaged for a term of six years. The officers receive from \$2.25 to \$3.00 a day, and traveling expenses according to whether they are county or district officers.

The general duty of each state police officer is "to suppress all affrays, riots, routs, unlawful assemblies, or other acts of actual or threatened violence to persons or property." Coöperation of the civil departments of the state government with the state police is guaranteed. Specifically speaking "any department of the state government may be designated by the governor as the department through which he shall carry out and execute the provisions" of the law, "and as the repository and custodian of the records required to be filed," and "whenever the state police or any part thereof, are placed upon active duty by order of the governor, he may place them under the direction and command of any officers of the state government." This might include the district attorneys-general as well as the other state officers.

The governor of Tennessee has direct command of the state police, just as he has direct command of the state militia, but the police must coöperate with the county officers when they are sent to a locality for special duty. While in such a locality, "their authority and power shall not be superior to the powers and authority of the sheriff as the principal officer of the peace of his county, but the protection afforded to the safety of persons and property shall be in addition to the protection of the sheriff in each county." In this manner, the state police may act as a link between the state civil departments and the county authorities for the achievement of a common object.

In the Northwest, Idaho has followed the direction of the South Dakota law of 1917, by creating a centralized and consolidated state constabulary to consist of "the department of law enforcement and all officers of the state, counties and municipalities who possess the power of peace officers . . . for the purpose of coöperating with and

<sup>6</sup> Tennessee, *Public Acts* (1919), ch. 96, p. 231.

assisting the governor in the performance of his constitutional duty of seeing that 'all of the laws are faithfully executed.'<sup>6</sup> For this purpose the department of law enforcement is given, among other powers, authority to enforce the temperance and criminal laws of the state, to detect and investigate crime, suppress riots, prevent affrays, prevent wrongs to children and dumb animals, to enforce laws for the care of dependent and neglected children, and laws for the maintenance of morality, "to order the abatement of public nuisances, and to enforce such orders by appropriate procedure in the courts." To carry out these provisions "any officer or employee of the state may in addition to his other duties be deputized as, and exercise the powers of, a state policeman," and the commissioner of law enforcement may call to the assistance of the state constabulary any other person.

Although the Idaho state constabulary is under the department of law enforcement, it is given jurisdiction and power to act anywhere in the state, and the members of the constabulary "shall furnish the department of law enforcement from time to time, such information regarding conditions in their several jurisdictions as may be required, and it shall be their duty to inform themselves of all violations of the criminal laws of this state, to notify the prosecuting attorney thereof, to file criminal complaints therefor, and to arrest and assist in the prosecution of persons charged therewith." The Idaho legislature appropriated \$50,000 for the carrying out of the provisions of the state constabulary act.

The California legislature of 1917 authorized the creation of a state bureau of criminal identification and investigation, under the supervision of a board of three managers appointed by the governor.

In 1919, the legislature of Connecticut organized a state police system which is something of a miniature of the larger organizations of Pennsylvania and Texas. The Connecticut organization consists of one superintendent of state police and a squad of from five to fifteen state policemen, including one captain, one lieutenant, and one sergeant. The superintendent is to hold office for two years, but the policemen serve during the pleasure of the state commissioners. The superintendent is given authority to discharge not more than five of his subordinates for inefficiency. General offices in the capitol of the state are provided for the police department, and \$3000 is allowed for office assistance.

<sup>6</sup> Idaho, *Session Laws* (1919), ch. 103, p. 368.



The department of police is required to assist the governor, state's attorneys, coroners, the superintendent of fisheries and game, and other state prosecuting officers in the detection and prosecution of crime. Each state policeman "shall have, in any part of the state, the same power with respect to criminal matters and the enforcement of the law relating to intoxicating liquors and gaming, as sheriffs, police or constables have in their respective jurisdictions" and "whenever the state policemen shall not be engaged in any specific work . . . they shall . . . use their best endeavors to prevent crime, preserve the peace of the state, and secure the detection, arrest and conviction of offenders." Sheriffs, municipal policemen, and constables may be called upon to assist the state police, and shall be paid for such service, not more than \$5.00 a day and expenses.

The annual salary of the superintendent of the Connecticut state police is not to exceed \$4000; that of a captain, \$2700; of a lieutenant, \$2300; of a sergeant, \$2100. The other policemen are not to receive more than \$5.00 a day.

In Texas an act was passed in 1919 "for the reorganization of the State Ranger Force for the Protection of the Frontier and suppression of lawlessness throughout the State."<sup>8</sup> The reorganized ranger force is to consist of "one headquarters company, and four companies of mounted men, except in cases of emergency, when the governor shall have authority to increase the force to meet extraordinary conditions. The headquarters company shall consist of one captain, who shall be designated the senior captain of the force, one sergeant, and not to exceed four privates." The new companies are to contain only fifteen privates instead of twenty as theretofore.

The direction of the force is centralized. The governor is required to appoint a captain "who shall discharge the duties of a quartermaster, commissary and paymaster." The entire ranger force "shall always be under the command of the Governor; to be operated under his direction in such manner, in such detachments, and in such localities as the governor may direct, acting by and through the Adjutant General" and the governor is authorized to keep this force in the field just as long as he may deem it wise to do so.

Both the officers and the men are to be appointed by the governor. The officers may be removed at the governor's pleasure, but the enlisted men are appointed for two years service, unless sooner removed for

<sup>7</sup> Connecticut, *Session Laws* (1919), ch. 297, p. 2971.

<sup>8</sup> Texas, *General Laws* (1919), ch. 144, p. 283.

cause by either the governor or the adjutant general. As in 1901, the governor and the adjutant general have direct control of the government and discipline of the rangers, but the new law requires that applications for appointment be made directly to the governor. No person is to be appointed to the Texas ranger force who is not a citizen of the United States. Preference for appointment is to be given to honorably discharged soldiers of the United States Army.

The captains are to receive monthly \$150; sergeants \$100; privates \$90. An increase in salary of fifty per cent is to be given after the first two years of service; and additional increases of five per cent for each succeeding year of service are to be given until the pay shall in this manner have been increased twenty per cent. An allowance of \$30 a month is provided for subsistence of members while on duty at their station. An allowance of \$3 a day is provided for the ranger when on duty outside of his district. Each ranger is required, as formerly, to furnish his own horse, while the state furnishes him with arms and equipment.

As formerly, the Texas rangers are "clothed with all the powers of peace officers, and shall aid the regular civil authorities in the execution of the laws. They shall have authority to make arrests, and to execute process in criminal cases, and in such cases they shall be governed by law regulating and defining the powers and duties of sheriffs when in discharge of similar duties; except that they shall have the power and shall be authorized to make arrests, and to execute all process in criminal cases in any county in the State." The rangers are permitted to accept volunteer aid from citizens, in the apprehension of criminals, but no provision is made for the pay of such citizens for their aid.

Closely akin to the reorganization of the Texas rangers is a similar reorganization of the Pennsylvania state police. More extensive in detail than the Texas legislation, but quite similar in general plan, the Pennsylvania act of 1919 involves many new police duties, including a bureau of fire protection. A superintendent of the department of state police is appointed by the governor. His salary is \$6000 a year. This superintendent appoints his own deputy superintendent, who receives \$4000 a year. He also appoints a chief of the bureau of fire protection who receives \$4000 a year, and who performs such duties as the superintendent may prescribe. Clerical employees of the department of police are appointed by the superintendent. The superintendent of police is empowered to appoint the entire police force, and have supreme control over them, subject to the approval of the governor.

The police force consists of five troops. Each troop is to have a captain, lieutenant, a first sergeant with fifteen other noncommissioned officers, and sixty-five privates. The members enlist for two years. They must be between the ages of twenty-one and forty years, and able to ride horseback. The annual pay of the privates is \$1200; noncommissioned officers, \$1350 to \$1500; commissioned officers, \$1800 to \$2400.

The superintendent of police provides for the equipment of the organization, including horses and motor vehicles, where it is deemed necessary. He must also establish local headquarters in various places, and distribute the policemen throughout the commonwealth in various sections where they are most needed.

The powers of the Pennsylvania state police are sufficient to cope with any potential local emergency. The various members are "authorized and empowered to make arrests without warrant for all violations of the law which they may witness, and to serve and execute warrants issued by the proper local authorities,"<sup>9</sup> and they are granted "all the powers and prerogatives conferred by law upon members of the police force of cities of the first class and upon constables of the Commonwealth."<sup>10</sup> They are required "to aid in the enforcement of all laws relating to game, fish, forestry, and water supply. Members of the State Police Force are authorized and empowered to act as game-protectors and as forest- fish- or fire wardens." They are permitted to "seize all guns, boats, decoys, traps, dogs, game, fish, shooting paraphernalia, or hunting or fishing appliances or devices, used, taken, or had in possession, contrary to law." They may "search without warrant any boat, conveyance, vehicle, or receptacle, when there is good reason to believe that any law has been violated," and they may serve subpoenas issued for any investigation or trial pursuant to such powers.

With the approval of the governor, the state police "may be called upon, by any other department of the state government, to enforce all laws applicable or pertaining to such department or any regulation thereof." Whenever possible, they are required to "coöperate with counties and municipalities in the detection of crime, the apprehension of criminals, and preservation of law and order throughout the state."

<sup>9</sup> Pennsylvania, *Session Laws* (1919), No. 179, p. 368.

<sup>10</sup> This power was utilized on November 29, 1920, when the Pennsylvania state police quelled a riot in Carlisle, Pa.

The department of state police is required to "collect and classify and keep at all times available complete information useful for the detection of crime and the identification and apprehension of criminals. Such information shall be available for all police officers within the Commonwealth." The department of police is also required to make a report to the governor biennially. Barracks for the policemen, with stables adjacent are to be provided near the state capitol.

This reorganized state police of Pennsylvania assumes all the former duties and books of the state fire marshal, which position is abolished. "The Superintendent of the State Police may appoint and remove the chief of the fire department of any county, city, borough, town, or township, where a fire department is established . . . and may appoint individual citizens as assistants to the department."<sup>11</sup> The police "may adopt and enforce rules and regulations governing" the use and storage of any inflammable or combustible materials, and investigate the circumstances of every fire that has endangered life or property. They may inspect buildings whenever necessary, order their removal or their improvement against the danger of conflagration.

In consultation with the state superintendent of public instruction, the department of police may decide upon "books of instruction, for use in the public and private schools, of students of all grades, with regard to the dangers of fire and the prevention of fire waste." The state police is thus given specific power over fire prevention.

Michigan authorized a force of state police as a war measure, and, in 1919, created a permanent department of state police.<sup>12</sup> The commanding officer is appointed by the governor, at a salary of \$4000 a year. He appoints one officer as adjutant and quartermaster, five captains, six lieutenants, sixteen sergeants, twenty corporals, and one hundred and fifty-four troopers. Applicants must be citizens of the United States, of sound constitution, able to write, of good moral character and not less than twenty-one years of age; and must pass a satisfactory physical and mental examination. Officers are commissioned by the governor, and may be dismissed only for inefficiency or misconduct, and with the approval of the governor. Troopers may be dismissed by the commanding officer whenever he deems such proposed dismissal necessary for the efficiency of the service.

The several officers and members of the force are vested with all the powers of deputy sheriffs in the execution of the criminal laws of the

<sup>11</sup> Pennsylvania, *Session Laws* (1919), No. 238, p. 710.

<sup>12</sup> Michigan, *Public Acts* (1919), p. 45.

state, and of all laws for the discovery and prevention of crime, and have authority to make arrests without warrants for all violations of the law committed in their presence, including laws designed for the protection of the public in the use of the highways of the state, and to serve and execute all criminal process. It is the duty of the state police force to coöperate with other state authorities and with local authorities in detecting crime, apprehending criminals, and preserving law and order throughout the state.

Activities of this force have included the suppression of gambling and riots, fighting forest fires, and the apprehension and arrest of fruit thieves and robbers.

Resembling the state police in this country are the Canadian provincial police, recently established in Alberta and Manitoba. The Alberta acts of 1917, 1919 and 1920, created the Alberta police force, with central headquarters in the city of Edmonton. The control of this force is vested in "the Attorney-General, or such other Minister as may from time to time be appointed by the Lieutenant-Governor in Council," but the direction of the force is centralized in a commissioner who is also appointed by the lieutenant governor in council.

The commissioner's power over the provincial police force is almost absolute. He is empowered to "appoint such persons and make such distinctions in rank as in his opinion shall be necessary for the efficient working of the force, and he shall appoint such number of provincial constables as he thinks proper from time to time, not exceeding in all five hundred men, and may employ any other persons to do such acts, matters and things as may be necessary for the efficient working of the force." He has much to do in regard to the salaries of the members and he "may make, alter and rescind regulations affecting the government, discipline and guidance of the force."<sup>13</sup> He engages every member of the force for a period of not less than two years, but he may suspend or discharge a member at any time. His authority was further augmented by the Alberta legislature of 1920, when that body enacted that the commissioners should "have power at any time upon the consent either verbal or written, of the mayor, chief of police or reeve of any municipality, to require or command the services of any member or members of the municipal police force of such municipality as he may deem necessary for service in any part of the province outside the boundaries of such municipality, and each such member of any municipal police force, while so serving shall be under the authority of

<sup>13</sup> *Alberta Statutes* (1919), ch. 26, p. 172.

the Commissioner, and shall have all the powers of a member of the provincial force, and shall be a member of the Provincial Police Force within the meaning" of the police acts. Furthermore, the commissioner is authorized to notify the mayor or other police official of any municipality "that he has assumed the conduct of the investigation or prosecution of a crime committed in the vicinity of any municipality, and thereafter it shall be the duty of any member of such municipal police force to render to the commission or any member of the Provincial Police Force charged with the investigation or prosecution of such crime all possible assistance and information and to carry out and obey the orders of the Commissioner or such member of the provincial force in charge of such investigation or prosecution."

Every member of the Alberta police force is a game and fire guardian; school attendance officer; inspector respecting noxious weeds; and has powers over the speed and operation of motor vehicles, theatres, billiard rooms, and factories. The members are required in cases where necessary, to apprehend criminals, convey convicts, prevent impending crime, and to execute warrants. Spécial power is given the provincial policemen to enforce the provincial liquor laws. They may when the commissioner so orders, break and enter any building or other place, stop vehicles or other means of conveyance, and seize any liquor that they may find. They may be authorized to arrest and search individuals suspected of having liquor on their persons.

The 1920 legislative session of Manitoba reconstituted the Manitoba provincial police as established in 1913, so that that force will be organized almost exactly as the Alberta police, but "the number of the constables on the force shall not at any time exceed one hundred."<sup>14</sup> The lieutenant governor in council is authorized to provide offices and lock-ups and other accomodations required by the force. It is made the duty of every person in the province "when called upon by any peace officer or member of the force, promptly to aid and assist him in the execution of his duties."<sup>15</sup> Punishment is provided for the failure of a person to do so.

It would thus seem from the recent legislation that the Texas rangers, the Pennsylvania and Michigan police, and the Canadian provincial police, have become organized on very similar lines, and that each has benefited by the previous experience of the other.

<sup>14</sup> *Alberta Statutes* (1920), ch. 8, p. 48.

<sup>15</sup> *Manitoba Legislative Acts* (1920), ch. 102, p. 320.

In several other states there is an active movement for the establishment of state police forces. In Massachusetts a special commission on state constabulary was provided in 1917, which recommended that the existing district police be abolished, that its inspectorial duties be assumed by other state authorities, and that its police duties be transferred to a new state-wide police system, composed of policemen chosen from the ranks of city policemen now in active service, by a state commissioner of police. In 1920, probably influenced by the Boston police strike of September, 1919, the legislature passed a resolution providing: "that the adjutant general and the commissioner of public safety shall investigate the advisability, practicability, and cost of establishing a state police force."<sup>16</sup> This commission is to make a report to the next general court. In the meantime, the present police forces of the cities are authorized to coöperate by the provision that "the mayor of a city and selectmen of a town may, upon the requisition of the mayor and aldermen of another city or the selectmen of another town, provide police officers who shall have the authority of constables and police officers within the limits of such city, and town, except as to the service of civil process."<sup>17</sup>

Proposals for a state police force were introduced into each house of the Illinois general assembly in 1919, but were defeated. An active propaganda in favor of state police legislation has been going on in Illinois since 1919; and bills for the establishment of such a police force will be again proposed in the session of 1921.

The governor of Alaska has drafted a bill for a territorial police force, which he has asked Congress to enact. More or less activity in favor of a state police system is also reported in a number of other states.<sup>18</sup>

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<sup>16</sup> *Massachusetts Acts and Resolves*, 1920, p. 575.

<sup>17</sup> *Ibid.*, ch. 591, sec. 13.

<sup>18</sup> *Journal of Criminal Law and Criminology*, Vol. 11, p. 453 (November, 1920).

## NOTES ON INTERNATIONAL AFFAIRS

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**The Meeting of the Assembly of the League of Nations.**<sup>1</sup> The opening session of the Assembly of the League of Nations was held at Geneva on November 15. It can scarcely be said that the meeting was begun under favorable auspices. Apart from the fact that the provisions of the Covenant of the League with respect to the jurisdiction and powers of the Assembly were on many points obscure, there were two strong influences at work to hamper the proceedings of the Assembly. In the first place there were the political and economic conditions arising out of the execution of the treaty of Versailles, which formed a sort of closed territory into which the Assembly of the League could not enter; and in the second place there was the presence of the Interallied Council as executor of the treaty, which, in the form of an interlocking directorate, influenced the decisions of the League Council and was thus indirectly a disturbing factor in the work of the Assembly. Neither of these two obstacles proved fatal to the formal activities of the Assembly, but they undoubtedly limited the scope of its functions and introduced division into the ranks of its members. Whatever may have been the supposed theoretical advantages which led to the tying up of the Covenant of the League with the treaty of Versailles, whether in the interest of softening the harshness of its terms or of promoting their execution with least injustice, it may now be questioned whether the treaty has not done more to hurt the League than the League has done to help the treaty.

*The Organization of the Assembly.* Article III of the Covenant of the League provides that the Assembly shall consist of representatives of the members of the League, and that it shall meet at stated intervals or from time to time as occasion may require. The internal organization and procedure of the Assembly are, according to Article V, to

<sup>1</sup> The following description is taken from unofficial sources, and for final accuracy must be checked up with the official documents when they are forthcoming.



be regulated by the Assembly itself, with the exception that the secretary general, who is at the head of the permanent secretariat of the League, is ex officio secretary general of the Assembly. The first task, therefore, of the Assembly was the election of its officers and the selection of its committees for the detailed study of the problems presented to it. Paul Hymans, head of the Belgian delegation and minister of foreign affairs of that country, was elected president by secret ballot. It was next decided that six committees or commissions should be appointed, each of which was to consider a definite group of subjects and to report later to the Assembly. In order to avoid offending the sovereignty of the small nations it was decided that each of the forty-one nations should be represented upon each committee. The result of this was to divide the Assembly into six assemblies, each considering the set of questions assigned to it. The following subjects were assigned as the special work of the six committees: general organization, technical organization, the court of international justice, finances, new members, and, together, disarmament, blockade, and mandates. The respective chairmanships of these committees went, by election of the Assembly, to delegates from Great Britain, Italy, France, Spain, Chili, and Sweden. In addition to these chairmen the Assembly elected six vice-presidents, representing the following states: Japan, Holland, Argentina, Czechoslovakia, Canada, and Brazil, four of the posts thus going to non-European nations. The president and vice-presidents, together with the chairmen of the committees, were thereupon formed into an executive committee of thirteen members, whose business it was to act as a sort of steering committee of the Assembly to direct the order of business and make informal adjustments of difficulties arising in the Assembly as a whole or in the separate committees.

Rules of procedure for the work of the Assembly and its committees, drawn up by the secretariat, were presented at the second meeting of the Assembly, and a sharp dispute immediately broke out over rule 15, which provided that "unless the committees decide otherwise, the meetings will be private, and no minutes will be kept." A motion made by Lord Robert Cecil, to the effect that all meetings should be public except when the committees could show good reason why they should be private, was defeated by the opposition of the British and French delegates, but it was then moved by the French delegation that a *procès-verbal* or summary report, not stenographic, of the meetings should be kept. The rule of unanimity was prescribed for the Assem-

bly by Article III of the Covenant, and it became of necessity the rule of the separate committees. The large size of the committees, due to the representation of all of the states, threatened to make the prompt expedition of business impossible, and proposals were made to divide the committees into smaller ones. It will be remembered that one of the chief obstacles encountered at the Hague Peace Conferences was that of securing unanimous decisions in the several committees. A rule of "quasi-unanimity" was there introduced, which consisted in the abstention from voting of the power or powers opposed to the resolution drawn up by the majority of the committee; but even this method proved ineffective whenever, as in the case of the proposal for compulsory arbitration, one or more of the Great Powers were ranged among the opposition. At the meeting of the Assembly the president resorted on one occasion, that of the veto by Argentina of the resolution on amendments, to the expedient of ruling that the question was one of procedure, not requiring unanimity, and the resolution was accordingly adopted. On other occasions individual states refrained from voting when they were out of sympathy with the resolution proposed, as in the case of the attitude of the French delegation towards the admission of Bulgaria into the League.

*Jurisdiction of the Assembly.* Article III of the Covenant of the League prescribes in general terms the jurisdiction of the Assembly. It is provided that "the Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world." The same language is used in Article IV in describing the general jurisdiction of the Council. In consequence of this general grant of power to the Assembly, whatever functions were assigned by the Covenant to the League without specific mention of either of its two constituted bodies, fall within the coordinate control of the Assembly, while other functions in respect to which the Council is assigned specific duties, are not necessarily reserved from the deliberative, as distinguished from the active, jurisdiction of the Assembly. Thus while the Council is entrusted by Article VIII with the duty of formulating plans for the reduction of armaments, the general problem of disarmament, as well as that of the manufacture by private enterprise of munitions and implements of war, is fully within the scope of the Assembly's jurisdiction. The guaranty of territorial integrity and existing political independence contained in Article X is an undertaking assumed by the members of the League as a body, so that the Assembly has jurisdiction to interpret the meaning of the article, in spite of the fact

that in the event of aggression contemplated in the article it was provided that the Council should advise upon the means by which this obligation should be fulfilled. The declaration in Article XI of the collective concern of the whole League for any war or threat of war, and of the intention of the League to take any action that may be deemed wise and effectual to safeguard the peace of nations, creates a general jurisdiction of the Assembly over such questions, even though it is the Council which is to be summoned forthwith in case any such emergency shall arise. In the case of Article XIV the duty of the Council to formulate plans for a Court of International Justice does not deprive the Assembly of the right to discuss the general nature of the international court and its proper functions. So also the obligations of boycott and military intervention assumed by the members of the League under Article XVI form a proper subject of deliberation and resolution by the Assembly, without any encroachment upon the special duty of the Council to recommend what contribution of military and naval forces shall be made in case they should be needed. It is undoubtedly a defect of the Covenant that the powers of the Assembly and those of the Council overlap on a number of points, but it was the inevitable consequence of making the Council at the same time an executive body to carry out the decisions of the League and a legislative body empowered to deliberate and act upon its own account within a prescribed field. The result was that while the Council held separate meetings of its own at the same time that the Assembly was in session, it was, through the representation of its members in the Assembly, an active participator in the deliberations and a constant obstacle to the free decisions of the Assembly.

In view of the difficulties experienced from the start in defining the separate jurisdiction of the Council and of the Assembly, a special committee was appointed by the Assembly to report on relations between the Council and the Assembly. The report was signed by the French delegate and contains the following delimitation of the activities of the two bodies: "It is impossible to consider the Assembly as a chamber of deputies and the Council as an upper chamber. The objection to this view is that while in certain matters the Council and the Assembly have rights, in others they have special rights, and that the two bodies are not called to discuss exactly the same points. If the Assembly were a chamber of deputies and the Council an upper chamber, the same subjects would be discussed before them. It is also impossible to consider the Assembly as a legislative and the Council as an executive body.

The truth is that the League has no analogy in constitutional law." After a review of the provisions of the Covenant the conclusion was reached that neither body had jurisdiction to render a decision in a matter which was common to the other; that the Assembly had no power to reject or modify a decision which fell within the exclusive province of the Council, and vice versa; that the representatives sitting in the Council and the Assembly rendered the decisions of their respective states (that is, they had no standing except as such representatives); and that the Council would present each year a report to the Assembly. When the four principles came before the Assembly the first principle was amended so as to concede to the Assembly the right to examine any question within the jurisdiction of the League, while the second principle was amended to eliminate the word "exclusive," and then, on objection of the Canadian delegation, the principle itself was reserved. The other two principles were adopted as framed.

One of the underlying and half-formulated issues before the Assembly bore upon the relation of the League to its individual members. What was the bond of union created between the members of the League by the Covenant? The president of Switzerland, M. Motta, as host of the Assembly, felt it necessary at the opening session to "affirm once more that the League of Nations is not and never will be a superstate which will absorb sovereignties or reduce them into tutelage." The aim of the League was, he said, "to establish between independent and friendly states frequent and friendly contact and meetings from which affinities and sympathies will follow." The issue was formulated in definite terms when the question of the ratification of amendments came up for consideration. Following the postponement of action on amendments until a subsequent meeting of the Assembly, it was agreed that all constructive acts of the League, such as the creation of the international court, being in the nature of treaties were subject, in the same manner as formal amendments, to ratification by the members of the League according to the provisions of their domestic constitutions. A further instance of the necessity of ratification by each state of the decisions of the League was the reply of Denmark to the request of the Council to furnish a contingent of the League army which was to supervise the plebiscite at Vilna. It was stated that, although the party leaders of Denmark were in favor of acceding to the request, under the constitution of Denmark the project would have to be approved by the Danish parliament; and the reply was received by the Assembly as satisfactory. But due deference having been paid to the traditional

theories of international law, the Assembly proceeded to raise a variety of issues which showed that it was far from blindly worshipping the old ideas and that its assertion of sovereignty and independence was not to be understood as interfering with the establishment of new principles of interdependence which were found to be imperatively needed in the modern world. The forms of existing law must be maintained and no nation was to be bound except by its own act; but the substance of that collective action for common interests which negatives the formal conception of sovereignty was demanded on all sides.

*Problems before the Assembly: The Amendment of the Covenant of the League.* The problems taken up by the Assembly may be roughly divided into legislative and executive problems. The former consisted in the attempt to formulate general principles regulating the future relations of the nations, as well as to lay down specific rules of conduct. First in importance of these problems was that of amending the Covenant of the League. The subject fell within the jurisdiction of the committee on general organization, and a vote was reached on November 23 in which it was decided to set aside proposed amendments and to appoint a standing committee to consider those and other proposals for amendment which might be made between that time and the second meeting of the Assembly. The decision to postpone amendments was based upon the ground, first that a change in the Covenant involved revision of the treaty of Versailles, of which the Covenant was an integral part, and it was thought inexpedient at that juncture "to pull apart that great international instrument which gave the seal to the peace of the world;" and secondly, that since the League was still young, being less than a year old, it would be desirable to have more experience before changing it. A further reason, not presented in the report, was the desire of the committee to give the United States time, after the new government came in on March 4, to frame its ideas of an international organization, which the committee might then examine with a view to determining whether the Covenant could be altered so as to incorporate them and thus pave the way for the entrance of the United States into the League. When the report of the committee was presented to the Assembly on December 2, M. Pueyrredon, head of the Argentine delegation, stood out against the rest of the Assembly and entered a dissenting vote. He insisted that his amendments relating to compulsory arbitration, the election of the members of the Council, and the admission of all states, were fundamental to the success of the League, and that unless they were adopted the League would be

"in the position of having built the roof of a house before its foundation." The ruling of the presiding officer by which this dissenting vote failed to prevent the adoption of the report of the committee has been referred to above. Subsequently the Argentine delegation withdrew from the Assembly in protest against the refusal of the Assembly to overrule the report of the committee and permit consideration of the proposed amendments.

*The Meaning of Article X.* An interpretation of the obligations incurred by the members of the League under Article X of the Covenant was reached after relatively little discussion. The committee on the admission of new states first raised the question in connection with the proposal to admit Austria. In reply to the difficulty offered by the Swiss delegation, that the admission of Austria would fix the boundaries of Austria as laid down in the treaty of Versailles and thus guarantee to Austria the possession of Vorarlberg which had voted by plebiscite to belong to Switzerland, the committee declared that it could not be too emphatically stated "that Article X does not guarantee the territorial integrity of any member of the League. All it does is to condemn external aggression on the territorial integrity and political independence of any member of the League, and calls on the Council to consider what measures to take to resist that aggression." The Canadian delegation proposed an amendment eliminating Article X from the Covenant in accordance with the action of the Parliament at Ottawa in making that reservation among others to its approval of the Covenant in April, 1919. The amendment was referred by the Assembly on December 6 to the special committee appointed to study all the proposed changes and report to the next meeting of the Assembly.

*The Problem of Disarmament.* Article VIII of the Covenant expresses a recognition on the part of the members of the League "that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations," together with a further agreement "that the manufacture by private enterprise of munitions and implements of war is open to grave objections." In both instances the Council of the League is empowered to formulate definite plans to bring about the objects desired; but this, as we have seen, did not take away from the Assembly a concurrent jurisdiction over the general principles at issue. The subject was assigned to the sixth committee. From the outset strong objections were met against any present steps towards disarmament. The French delegation, backed by the British

delegation, urged that before the nations could proceed to disarm the several peace treaties would have to be completely executed, and that an investigation would have to be made, full information exchanged between the nations, and a report presented by the military committee of the Council. The smaller states were in favor of making preparations immediately for a schedule of disarmament. As an alternative to present measures the British and French delegations acceded to a motion by the Brazilian delegation proposing a government monopoly of arms and munitions and providing publicity for the disposal of the products of the government arms factories. A sub-committee was appointed to study a practical way in which the Assembly could express its opinion of the plan. When it was seen that no definite declaration would be made by the committee, a motion was made by the Norwegian delegation that the Assembly recommend that the nations bind themselves not to spend more money on armament in 1922 and 1923 than they contemplated spending in 1921; but even this very modest proposal was defeated by the opposition of the Japanese delegation, which declared that Japan had laid out a military and naval program from which it could not depart for at least two years, and that so long as "there were nations outside the League not bound by the obligations imposed upon its members" Japan would continue to increase her armament.

In the meantime the Council of the League, which was also in session, acting on the recommendation of its permanent committee on military, naval, and aviation questions, forwarded on December 2 to the American government an invitation "to name a representative to sit on this committee in a consultative capacity during its study of the question of disarmament." It was pointed out by the committee of the Council that in spite of the fact that the United States was not a member of the League and would not be committed by the report of the committee, it would greatly facilitate the work of the committee in dealing with the technical problems of disarmament to have the United States represented. A precedent for such participation had been created in the coöperation of a representative of the United States in the drafting of the international court. President Wilson, however, in a letter of December 8, declined the invitation on the ground that in spite of his sympathies with the task "as the Government of the United States is not a member of the League, he does not feel justified in appointing a commission to take even a de facto participation in the deliberations."

*The Court of International Justice.* Article XIV of the Covenant provides that the Council shall formulate and submit to the members of the League for adoption plans for the establishment of a permanent Court of International Justice. Acting on this authorization the Council appointed a special commission to prepare such a plan, and a meeting was held at the Hague in June, 1920, at which the United States was represented in an advisory capacity by Mr. Root. The report presented by the commission came before the third committee of the Assembly under the chairmanship of M. Leon Bourgeois, who had taken an active part in the work of the Council's commission as well as in the work of a similar committee of the Second Hague Conference. A division early manifested itself in the Assembly's committee on the question of conferring compulsory jurisdiction upon the court, a majority favoring permitting the complainant to cite the defendant nation to the court. An address before the Assembly on December 2 by President Motta of the Swiss delegation pleading for a "live" court with compulsory jurisdiction was received with general approval; but the opposition of Great Britain, France, Italy, and Japan prevented the inclusion of such a provision in the proposed plan. The report of the third committee announced that "the proposal for compulsory jurisdiction in international relations is not accepted. It is urged that such a principle could not possibly obtain unanimous support among all the members." On December 13, after an all-day debate on the point of compulsory jurisdiction, the Assembly adopted the plan drawn up by the committee of the Council, which provided that "the jurisdiction of the court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force." By way of an initial step towards obligatory jurisdiction it was further provided that any of the members of the League might declare the jurisdiction of the court compulsory as between themselves in respect to disputes concerning the interpretation of treaties, or questions of international law, or the existence of facts constituting a breach of international obligation. The difficulty of the selection of the judges of the court, which proved to be the stumbling block to the adoption of the Hague judicial arbitration court, was adjusted to the satisfaction of the large and small states by the provision that the court should consist of eleven members to be nominated by the jurists of the Hague Tribunal (the so-called "Permanent Court of Justice") and elected by the Council and Assembly of the League.



*The Application of the Economic Boycott.* The conditions under which the economic boycott provided for in Article XVI of the Covenant is to be put into effect are stated in specific terms, and no special functions are assigned to the Council to determine the action to be taken in the individual case. A number of questions were, however, left unsettled by the article. The subject fell within the jurisdiction of the sixth committee. Sharp debate developed over the respective functions of the Assembly and the Council in regard to the decision when a nation should be held to have violated the obligations which the economic sanction was designed to protect. A subcommittee was appointed to draft a plan for the use of the economic boycott, and it was first decided that the power to order an economic blockade should be placed absolutely in the hands of the Council. Some of the small states were in favor of allowing individual nations to decide whether they should blockade a neighbor or not; but it was agreed that no individual blockade action should be valid unless approved by the Council, on the ground that this was the one real weapon possessed by the League and that it must be used strictly and universally to be effective. On the other hand, in view of the opposition of the Swedish delegation to the conferring upon the Council of the power to decide when a blockade should be instituted, provision was made that a member of the League might reject the decision of the Council if it believed it to be unjust. Subsequently, on December 10, when the report of the committee was presented to the Assembly the provision empowering the Council to determine the moment for enforcing the blockade was eliminated, and it was left for each country to decide for itself when the blockade should be applied. Provision was made, however, that the Council should hold a meeting on notice from the Secretary General of an apparent violation, and that the minutes of this meeting should be thereupon communicated to the members of the League, who should then decide for themselves whether a case had arisen calling for the application of the economic sanction. The presentation of the report provoked strong expressions of opinion in the Assembly from those who felt that the one available weapon of the League was thus rendered too dull for effective use.

*Colonial Mandates.* The question of the interpretation of Article XXII of the Covenant relating to the administration of backward countries by mandatary states threatened more than any other to bring the final meetings of the Assembly to a deadlock. The article, after distinguishing three classes of backward territories provided that "the

degree of authority, control or administration to be exercised by the mandatarly shall, if not previously agreed upon by the members of the League, be explicitly defined in each case by the Council." Moreover, "a permanent commission shall be constituted to receive and examine the annual reports of the mandataries and to advise the Council on all matters relating to the observance of the mandates." On the other hand, by Article 119 of the treaty of Versailles, Germany renounced all her rights and titles to her overseas possessions to the Allied and Associated Powers, which resulted in the assumption by the Allied Supreme Council of complete control over the territories in question. A contest between the Assembly and the League Council for jurisdiction naturally ensued. On December 10 the Council announced that it could not at that time present a definite statement on the mandate situation because the terms of the mandates were still under discussion by the powers which had assumed the direction of the former German colonies.

On December 16 the sixth committee of the Assembly reported that it had made attempts to inquire into the character of the mandates, but that it had been informed by the Council that only the drafts relating to Class A mandates (Syria, Mesopotamia, and Palestine) had as yet been submitted by the Allied Supreme Council, and that even these the committee had only been permitted by the Council to see on condition of pledging themselves to secrecy. The report then protested against the possible use of the mandates for the purpose of recruiting troops or exploiting the resources of the territory. The situation presented was thus one in which the Assembly, as sole representative of the League as a body, had no power either to assign mandates or to lay down in advance the conditions of their administration, in spite of the fact that by the terms of the Covenant mandates are held under the League.

The following day the Council received Class C mandates, and promptly approved and published them without communicating with the Assembly's committee, thus showing that it intended to reserve to itself exclusive right to determine the conditions of the mandates without interference on the part of the Assembly. At the final meeting of the Assembly on December 18, the South African and Canadian delegates sharply criticized the Council for its failure to communicate to the Assembly the texts of the mandates, and they were answered by a defiant announcement from the British delegate that neither he nor his successor on the Council would feel bound by anything that "this Assembly or any other Assembly shall do." The recommendations of the

committee were nevertheless adopted unanimously, the British delegate stating that they would have no effect, instead of voting against them. The letter of Secretary Colby, sent on November 20 to Great Britain, protesting against the assertion of the British government that the terms of the mandates could properly be discussed only in the Council of the League of Nations, should be read in this connection.

Other legislative activities of the Assembly may be briefly referred to. On December 9 the Assembly passed a resolution establishing a special bureau of a "temporary and advisory character" to deal with the economic situation. Five days later the Assembly adopted the recommendation of the bureau for the establishment of a system of international credit to assist in the economic reconstruction of those nations whose diminished credit prevented the purchase of necessary supplies. An international commission was created, to which the particular country in need of credit would assign certain specific assets, such as customs duties, railroads, or monopolies, as security for the credits granted. The commission was then to examine the assets and determine the gold value of the credit which it would approve against the security offered. The plan is perhaps the most constructive accomplishment of the first League Assembly. Efforts were made for a second time by the Swiss delegation to have the economic bureau instructed regarding a pooling of the world's raw materials, but the Assembly took no action in the matter. In an endeavor to prevent the spread of typhus the Assembly appointed on December 7 a commission of three members to conduct the fight and to make a new appeal to nations and welfare societies for funds which the appeal of the Council had not succeeded in raising. In order to supplement the present international convention for the suppression of the white-slave trade the Assembly adopted on December 15 a resolution providing for the calling of an international conference to which all nations, whether members of the League or not, would be invited, to draft standard laws for the prevention of traffic in women, and arranging for the submission by the secretariat to each government of a questionnaire asking what measures had been taken in that country to deal with the problem. At the same session it was voted to transfer from the Dutch government to the League of Nations the supervision of the enforcement of regulations for the suppression of the opium traffic.

*Executive Acts of the Assembly. The Admission of New States.* Among the executive acts of the Assembly, involving the practical application of principles and rules laid down in the Covenant, was the

admission of six new states to the membership of the League. Sharp controversy developed over the proposed admission of the Teutonic powers and their allies. At the opening session of the Assembly the technical question was raised whether applications for admission after October 14, the date set by the Council and the secretariat, should be received, and it was voted to permit the committee to consider them.

The fifth committee, in deference to the opposition of France, set aside the question of the admission of Germany. Opposition also developed from Yugoslavia, Czechoslovakia, and Rumania against the admission of Bulgaria and Austria, but on December 1 the committee voted to recommend the admission of Austria, as well as that of Costa Rica, at the same time voting against the admission of Ukraine, Azerbaijan, and Lichtenstein, the last mentioned to be represented in the League by Switzerland. The admission of the Baltic states and of Georgia was also rejected, partly out of deference to the known opposition of the United States to any action with regard to the delimitation of the boundaries of Russia or the partitioning of its territories until the present government should be replaced by one more truly representative of the Russian people. On December 9 the admission of Bulgaria was voted, France alone withholding approval. The admission of Austria was finally voted by the Assembly on December 15, and the following day Bulgaria, Luxemburg, Finland, and Costa Rica were admitted.

The admission of Armenia to the League proved to be a source of special difficulty owing to the fact the Turkish nationalists under Kemal Pasha had rejected the treaty of Sèvres, as well as to the rumor that Armenia had set up a Bolshevist government in sympathy with that of Russia, so that, as in the case of Georgia, Azerbaijan, and the Baltic states, the League was unwilling to run the risk of guaranteeing its boundaries. The committee, therefore, reported against admission. In the meantime, however, the Assembly adopted a resolution calling upon the Council to select a power to negotiate with Kemal about Armenia. On November 24 the Council authorized the secretariat to submit a telegram to be sent to the powers inviting them to offer their services for that purpose, and on December 1 replies were received from President Wilson, as well as from the foreign offices of Spain and Brazil. The committee also decided against the admission of Albania, but the efforts of Lord Robert Cecil, who pointed out that the situation of Albania differed from that of Armenia in that Albania was not surrounded by hostile states, led the Assembly to set aside the report of the committee, and Albania was admitted by a unanimous vote.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

Professors Edward Elliott and J. R. Douglas, of the department of political science at the University of California, have severed their connection with that institution. Professor Raymond G. Gettell, of Amherst College, is filling one of the vacancies thus created during the present semester.

Hon. Roland S. Morris, ambassador to Japan, is giving a course in international law at the University of Pennsylvania during the current year. This course was formerly given by Dr. L. S. Rowe, who resigned to accept the directorship of the Pan American Union. Mr. Charles Lyon Chandler, manager of the foreign trade department of the Corn Exchange National Bank, of Philadelphia, is giving a course in the relations of United States and Latin America.

Dr. Clyde L. King has been promoted to a full professorship of political science at the University of Pennsylvania. He continues his work as an arbitrator in the milk industry and is sitting as a member of a conference representing the milk producers, milk distributors, and the public of Pennsylvania and Maryland. He has lately published a book entitled *The Price of Milk*.

Professor J. Q. Dealey, head of the department of social and political science at Brown University, plans to spend several months in China this year teaching and lecturing. Messrs. D. Appleton and Company will soon publish a new volume by him, entitled *The State and Government*.

Professor John C. Dunning, of Brown University, expects to spend the next academic year in South America studying political conditions.

Mr. I. R. Hudson, instructor in history and political science at Vanderbilt University, has been advanced to the grade of assistant professor.

Dr. Ellery C. Stowell, formerly of Columbia University, has opened offices in Washington for the practice of law. He will confine his attention to matters involving questions of international law.

Professor Lindsay Rogers, of the University of Virginia, is lecturing at Columbia University during the winter session. One of his courses deals with recent developments in European governments and the other with the government of dependencies.

Mr. Frank M. Russell, formerly of the University of Washington, has been appointed acting assistant professor of political science at Leland Stanford University.

Dr. Luther H. Gulick, of the New York Bureau of Municipal Research, is conducting a graduate course in problems of municipal administration at Columbia University.

Professor Léon Duguit, dean of the faculty of law of the University of Bordeaux, and a distinguished writer on public and private law, gave six lectures at Columbia University, in December, on political and social conceptions in France since 1789.

Mr. Poultney Bigelow, formerly lecturer in the law school of Boston University, is preparing to go to the Orient with a view to making a study of the economic conditions of Japan and her new spheres of influence.

Mr. Norman L. Hill, who received the master's degree at Oberlin College last June, has been appointed to an instructorship in political science at Ohio Wesleyan University. A largely attended "school of citizenship" for women was held at Ohio Wesleyan last October, under the auspices of the department of political science.

Dr. J. Lynn Barnard, of the Philadelphia School of Pedagogy, has been appointed director of social studies in the department of education of the state of Pennsylvania. He is to develop and install a twelve-year program of training in citizenship in the schools.

A new organization, known as the Citizen's Research Institute of Canada, with headquarters at Ottawa and Toronto, has been formed to study Canadian problems of administration and public finance. It is intended to do for the provinces and municipalities throughout Canada work similar to that which municipal research bureaus do for their own cities. The director of the institute is Mr. Horace L. Britain, who continues as director of the bureau of municipal research of Toronto.

The American Civic Association held its sixteenth annual convention in October at Amherst, Massachusetts. The general subject was country planning.

A special series of lectures is being given this year before the students of the school of foreign service of Georgetown University on the general subject of the history and nature of international relations. Lecturers in the series thus far have included Professor Michael I. Rostovtseff, of the University of Wisconsin, Professor C. J. H. Hayes, of Columbia University, and Dr. Paul S. Reinsch, of Washington, D. C.

The fortieth annual meeting of the Academy of Political Science in the City of New York was held at the Hotel Astor in December. The general subject was American foreign trade relations, and separate sessions were devoted to tariff readjustments and trade expansion, the present economic situation in relation to foreign trade, the American merchant marine and the ship-building industry in relation to foreign trade, and educational training for foreign trade.

The twenty-sixth annual meeting of the National Municipal League was held at Indianapolis in November. Joint sessions were held with the Government Research Conference, the National Association of Civic Secretaries, and the Municipal League of Indiana. Subjects considered included service at cost for street railways, government aids to housing, the success of the city-manager plan, city-county consolidation, the crisis in public service, and methods whereby civic organizations influence voters. The progress report of the committee appointed to draft a model state constitution was presented and debated at length. The report calls for a unicameral legislature, with the governor as the only other elective official. A legislative council, so constituted as to be virtually a standing committee of the legislature, and authorized to sit between sessions, is also recommended. A feature of the

convention was the banquet session at which the league's president, Hon. Charles E. Hughes, spoke on "The Fate of the Direct Primary." Mr. Hughes urged that the primary be so modified that legally elected party representatives would make the preliminary nomination, subject to appeal to a primary should this designation prove unsatisfactory to a fraction of the party membership. Professor Charles E. Merriam, of the University of Chicago, spoke at the same session in favor of the direct primary as at present employed.

An "institute of politics," proposed by President Harry A. Garfield of Williams College and authorized by the trustees in 1913, but delayed in opening by the war, will hold its first session at the college from July 28 to August 27. Its object, as announced, is to advance the study of politics and to promote a better understanding of international problems and relations. The subject for this summer's session will be international relations, and it is planned to have lectures by men of international prominence. Round-table conferences will be in charge of professors from American colleges and universities. The lectures are to be open to the public, but classes and conferences may be attended only by members of the institute. Membership is limited to members of faculties of colleges and to other persons who are specially invited on account of their special training and experience in the field of politics. An unnamed benefactor has provided funds to cover the expenses of the institute for three years, including remuneration of the lecturers and furnished houses for them while in Williamstown.

An active part in the discussion of public questions is being taken by the Chamber of Commerce of the United States; and several of its committees include, besides leading business men, some university and other specialists in political affairs. President Frank J. Goodnow, of Johns Hopkins University, W. F. Willoughby, and John A. Fairlie are members of the committee on budget and efficiency. President H. A. Garfield of Williams College is a member of the committee on immigration. John Ihlder is head of the civic development department, which is giving special attention to housing problems, which were considered at a meeting of the national council of the chamber, held in Washington on January 27 and 28. A referendum vote of the membership of the chamber throughout the country has been taken on a proposed program of federal tax revision. A special committee has been appointed to study recent Montana and Indiana statutes providing for state control of prices.



**Annual Meeting.** The sixteenth annual meeting of the American Political Science Association was held at Washington, December 28-30, 1920. One hundred and twenty-five members registered, and the actual attendance may be estimated at one hundred and fifty. The American Historical Association, the American Sociological Society, and several other organizations were in session at Washington at the same time. The Political Science and Historical Associations held three joint sessions, and the several associations united in a formal dinner. Other social features included an informal dinner tendered the members of the executive council and board of editors by the president of the association, Dr. Reinsch, a smoker at the Cosmos Club, and a reception at the French embassy.

The meeting opened on December 28 with a luncheon conference at which Professor W. B. Munro, of Harvard University, presented a preliminary report of a committee on instruction in political science created at the annual meeting of 1919. The report dealt with instruction in civics in high schools and urged, in particular, the need for an authoritative definition of what should be included in the school curriculum under the name of civics, the need for trained teachers, and the need for better text-books. The report provoked lively discussion, and, as is stated below, the association took measures to secure the further consideration of the subject.

At a session devoted to administrative reorganization in the federal government, papers were read as follows: "Administrative Reorganization from the Executive Point of View," by W. W. Warwick, comptroller of the treasury; "The Educational Function of the Federal Government," by H. Barrett Learned; and "Administrative Reorganization from the Congressional Point of View," by Senator Thomas Sterling, of North Dakota.

At the first joint session with the American Historical Association presidential addresses were delivered by Professor Edward Channing on "An Historical Retrospect" and Dr. Paul S. Reinsch on "Secret Diplomacy: How Far can it be Eliminated?"

The subject considered at the opening session on December 29 was Problems of International Politics. Professor Pitman B. Potter, of the University of Wisconsin, presented a paper, entitled "Some American Steps toward International Organization," and Professor Quincy Wright, of the University of Minnesota, discussed "The Control of Foreign Relations." This was followed by an afternoon session devoted to contemporary political theory. Papers were read as follows: "A Survey

of the Present State of the Study of Politics," by Professor Charles E. Merriam, of the University of Chicago; "Some Contributions of Sociology to Modern Political Theory," by Harry E. Barnes, of Clark University; and "The Technique of the Pluralistic State," by Professor F. W. Coker, of Ohio State University.

Relations between the legislative and executive branches were considered at the opening session on December 30. Professor Lindsay Rogers, of the University of Virginia, discussed "Legislative Inefficiency and Presidential Autocracy;" Professor Victor J. West, of Leland Stanford University, presented a paper on "Congressional Government and Administrative Efficiency;" and Professor George H. Haynes, of Worcester Polytechnic Institute, offered a fresh analysis of "Early Relations between the President and the Senate."

State constitutional conventions were discussed at a luncheon conference presided over by Professor A. R. Hatton, of Western Reserve University; and several members of the Political Science Association took part in a similar conference on Far Eastern affairs, held jointly with the American Historical Association, and presided over by Dr. Reinsch.

The last two sessions were joint meetings with the American Historical Association. The first was held at the Pan American Building and was devoted to Pan American politics and diplomatic relations. Papers were read as follows: "Constitutional Tendencies in Latin America," by Professor H. G. James, of the University of Texas; "Pan-Americanism and the League of Nations," by Professor Manoel de Oliveira Lima, of the Catholic University of America; and "The Monroe Doctrine as a Regional Understanding," by Professor Julius Klein, of Harvard University. The general subject at the closing session was Recent European History and Politics. Professor Ralph H. Lutz, of Leland Stanford University, gave a paper on "The Spartican Uprising in Germany;" a paper by Professor A. C. Coolidge, of Harvard University, on "The Break-up of the Hapsburg Empire," was read by Professor W. B. Munro; and a discussion of "The Syrian Question" was presented by Professor Stephen P. Duggan, of the College of the City of New York.

At the business session held on the afternoon of December 29 the secretary-treasurer submitted a report on the membership and finances of the Association for the fiscal year ending December 15. Briefly summarized, this report was as follows:

*1. Membership*

	<i>Year ending Dec. 15, 1920</i>	<i>Year ending Dec. 15, 1919</i>
Members gained during year.....	96	68
Members lost during year.....	118	143
Net loss.....	22	75
Applications pending.....	21	3
Total membership.....	1,309	1,321

*2. Finances*

	<i>Year ending Dec. 15, 1920</i>	<i>Year ending Dec. 15, 1919</i>
Balance in general account at opening of fiscal year.....	\$1,054.59	\$512.98
Receipts during year.....	5,090.97	5,487.98
Total available funds.....	\$6,145.56	\$5,980.96
Allocated to Trust Fund (life memberships).	\$120.00	\$170.00
Bills paid for preceding year.....	1,275.78	898.90
Disbursements to meet expenses of current year.....	4,651.51	3,857.47
Total disbursements.....	\$6,047.29	\$4,926.37
Balance in general account.....	\$98.27	\$1,054.59
Bills remaining to be paid in succeeding year.....	1,140.00 (est.)	1,275.78
Trust fund.....	\$832.30	\$724.98

It was shown that the association's deficit was caused almost entirely by the increased cost of publishing the REVIEW, and it was reported that the executive council proposed to meet the emergency by a slight temporary reduction in the size of the REVIEW and by inviting members of the association to make a voluntary contribution, in 1921, of one dollar, in addition to the regular dues. The latter stand unchanged at four dollars. It was pointed out that the association's most imperative need is an increased membership, and members of the association were urged to assist in adding new names to the list. It was reported, also, that the executive council had voted that members failing to pay dues should be dropped at the end of two years from the time when payment is due, instead of three years as heretofore.

The treasurer's books were audited by a committee consisting of Professor Charles E. Merriam, of the University of Chicago, and Mr.

R. S. Childs, of New York City. The committee reported the accounts correct.

Professor J. P. Chamberlain, of Columbia University, delegate of the American Political Science Association in the American Council of Learned Societies, reported to the executive council on the work and plans of the latter organization; and the executive council gave the president of the association continuing authority to appoint two delegates to represent this society in the American Council.

The report of the committee on instruction was formally received, and the association voted to establish a new committee of five—to consist of Professor W. B. Munro and four persons named by him—to continue the work of the former committee, especially with a view to defining "civics," mapping out a desirable course in the subject for secondary schools, and considering ways of establishing such contacts with teachers and educational authorities as will enable the association to exert proper influence in shaping the content and method of secondary instruction in the subject. It was understood that the committee would take steps to put its report before the teaching public at an early date, without waiting for formal action by the association at the 1921 meeting.

Through its chairman, Professor A. N. Holcombe, of Harvard University, a committee recently appointed to consider the establishment at Washington of a special center for advanced study of government reported progress. The committee will continue its work, in conference with other organizations which are interested in similar projects.

Officers of the association for 1921 were elected as follows: president, Leo S. Rowe, director general of the Pan American Union, Washington, D. C.; first vice-president, Harry A. Garfield, president of Williams College; second vice-president, W. F. Willoughby, director of the Institute for Government Research, Washington, D. C.; third vice-president, Thomas R. Powell, professor of constitutional law, Columbia University; secretary-treasurer, Frederic A. Ogg, professor of political science in the University of Wisconsin; members of the executive council for the term ending in December, 1923: Chester Rowell, Fresno, California; Henry W. Temple, Washington, Pa., member of Congress; Charles McCarthy, director of the Wisconsin Legislative Reference Library; Charles G. Haines, professor of government in the University of Texas; and Lindsay Rogers, professor of political science in the University of Virginia.

On motion of Professor John A. Fairlie, managing editor, the board of editors of *THE AMERICAN POLITICAL SCIENCE REVIEW* was re-elected for 1921, with the following changes: Professor J. D. Barnett, of the University of Oregon, and Mr. C. C. Williamson, of the New York Public Library, retire, and Professors E. S. Corwin, of Princeton University, and Thomas H. Reed, of the University of California, become new members.

The place of meeting in 1921 was left to the decision of the executive council.

## BOOK REVIEWS

EDITED BY W. B. MUNRO

*Harvard University*

*Government and Politics of France.* By EDWARD MCCHESENEY SALT. (Yonkers-on-Hudson: World Book Company. Pp. xv, 478.)

*Contemporary French Politics.* By RAYMOND LESLIE BUELL. (New York: D. Appleton and Company. Pp. xxvii, 523.)

The dearth of books in English dealing in an acceptable way with the government and politics of France has been remedied in a notable degree by the almost simultaneous appearance of these two volumes. Each book supplements the other, and the two, taken together, give a full and satisfactory account of the republic's governmental system and of its parties and political issues. Professor Salt's volume belongs to the Government Handbooks series, which already included creditable books on the political systems of the United States, Canada, Germany and Switzerland. With a view to a full and systematic description of the structure and workings of the governmental system with which he deals, the author devotes one chapter to the constitution, eight chapters to executive, legislative, and judicial organization and procedure, one chapter to local government and administration, and two chapters to political parties and electoral activities, including a survey of party history during the past half-century. The method of treatment is conventional, but it is hard to see how it would be improved upon. Careful use has been made, not only of the standard treatises of Esmein, Duguit, Noël, Berthélemy, and Chardon, but of numerous monographs, articles and source materials, and an excellent classified bibliography is presented at the end of the volume. The book is written in a dignified, but vivid, style and is embellished with illustrations in keeping with its general quality.

Mr. Buell's volume deals with other matters, and is of a wholly different character. The author is a young scholar who went to France as a member of the American Expeditionary Force, and who, following

his period of active service, made a rapid, yet extensive, study of French political ideas and attitudes, drawing his information partly from the press and partly from interviews with representative men of various classes and affiliations. His book treats of three matters chiefly: political parties and how they function in Parliament, current movements for political reform, and French opinion on the peace settlement and the League of Nations. The description of parties is notable mainly for an excellent account of the parliamentary election of 1919; although it may be added that the emphasis laid upon the elements of continuity in party organization will aid in correcting the prevalent notion that there are no true political parties in France. The movements for political reform which receive fullest attention are "regionalism," the representation of professions in political bodies, and the demand for a new constitution doing away with the cabinet system and substituting a government modeled on that of the United States. The discussion of French ideas on the nature of the peace and on the League of Nations traverses ground now generally familiar, although there are some fresh and illuminating citations of opinion as it has found expression in the French press; and a final chapter on the attitude of France toward American "idealism" is an exceptionally clear bit of analysis. The book bears occasional evidence of the author's immaturity, and the proof reading has been poorly done. Taken as a whole, however, the volume is a welcome contribution to the literature of a subject upon which the French have themselves written curiously little.

FREDERIC A. OGG.

*University of Wisconsin.*

*Studies in History and Politics.* By the Right Honorable HERBERT FISHER. (Oxford: The Clarendon Press. Pp. 213.)

Of eleven essays presented in this volume, all except one were written before the author entered official life, and all except two were first published in the *Quarterly Review* or other English journals. Half of them are nominal book reviews—in reality, independent discussions suggested by certain books, after the English manner—and in their subjects they range all the way from Ammianus Marcellinus, the last of the Latin historians, to the political writings of Rousseau, Ollivier's memoirs, and the historical work of Lord Acton. The chief characteristics of these papers seem to be philosophic grasp and independence of judgment. The essay on Rousseau, for example, presents a view of the

French philosopher which is decidedly more favorable than that commonly held in England, where opinion on the subject is still fairly represented by Dr. Johnson's remark, "Rousseau, sir, is a very bad man;" although it should be added that an important corrective of English prejudice was supplied by Mr. C. E. Vaughan's edition of Rousseau's political writings before Mr. Fisher produced his essay. All things considered, the author's critical opinions are most original and judicious, however, when he is dealing with the writings and influence of the philosophic, Liberal, Roman Catholic historian, Lord Acton; and his lament over the vast stores of thought and knowledge which perished with Acton—a man who was inhibited by sheer bulk of knowledge and by scholarly conscience from producing the great works from his own pen which he projected—will be echoed by every historical-minded person.

Among the papers which do not partake of the character of book reviews the most important for the student of political science is one on the subject of administration in the British Empire. Recognizing that the Empire, as such, does not possess an administrative system, the author makes an illuminating comparative survey of the forms of administration prevailing in the several dependencies and lucidly describes the difficulties encountered in organizing and maintaining a civil service in colonies, especially those of a tropical or subtropical nature. In view of the present unrest in India, it is interesting to note the opinion that the inhabitants of a well-governed native Indian state are "on the whole happier and more contented" than the inhabitants of British India proper; and the suggestion follows that the solution of the Indian problem may be found, at least in part, in extending the area of India now governed by this indirect method.

FREDERIC A. OGG.

*University of Wisconsin.*

*Political Thought in England from Locke to Bentham.* By HAROLD J. LASKI. (New York: Henry Holt and Company; Home University Library of Modern Knowledge. Pp. 323.)

The high level of excellence of the Home University Library generally, and in particular of the two other volumes which deal with the recent history of political thought in England, is fully maintained by Mr. Laski. The book before us with Davidson's *The Utilitarians*, and Barker's *From Herbert Spencer to the Present Day*, certainly constitute the best introduction to the study of the history of English political ideas since the Revolution.



Mr. Laski's survey begins with Locke and ends with Burke. His studies of these two great figures are very well done. He has related them to their environments; brought out in clear effect the interplay of political facts and political ideas; and illuminatingly analyzed the significance of their contributions for their own and succeeding generations. But it was not to be expected that in such well-tilled fields much new information was to be supplied. It is in the arid and hitherto almost uncultivated region which lies betwixt that Mr. Laski has done his most valuable work. He has here enabled us to better understand the importance in the field of political ideas of such writers as Bolingbroke, Hume, Blackstone, Adam Smith, Price and Priestly, with whom we might have claimed at least a passing acquaintance. But even more important, he has drawn attention to the real significance of a number of other writers hitherto quite obscure, if not unknown, controversialists such as Hickes, Leslie, Shower, Wake, Hoacly, Law and Warburton. It is a period in which political ideas develop through the fermentation of controversies waged by a multitude of minor pamphleteers rather than by the *magna opera* of philosophical writers of the first importance. But political thought germinates and fructifies none the less than in the heroic epochs of Hobbes or Locke.

The age-old problem of the relation of church and state here again holds the center of the stage, and Mr. Laski has pointed the meaning for our own day of such controversies as those connected with the nonjuring schism, the question of the rights and position of convocation, the proposed repeal of the Test Act, and the deist movement. That in all these he finds valuable material for his own conception of a pluralistic state is to be expected.

In truth, this is just such an illuminating, not to say brilliant, little book, studded with forceful epigrams and reflecting a very wide and fruitful reading, as one might expect Mr. Laski to write. Like his previous books, however, it is marred by occasional carelessness of phrase.

WALTER JAMES SHEPARD.

*University of Missouri.*

*American Political Ideals.* By CHARLES EDWARD MERRIAM.  
(New York: The Macmillan Company, 1920. Pp. 481.)

In this work, Professor Merriam continues his study of the development of political thought in this country. In a previous volume he dealt with our political history down to the close of the civil war. The

present volume covers the period that has elapsed since then down to the entrance of the United States in the war with Germany.

Professor Merriam begins with a chapter on "The Background of American Political Thought" and then proceeds to examine various underlying American political doctrines, for example, the consent of the governed, the system of checks and balances, the responsibility of judges in a democracy and the methods of constitutional change. His discussion does not proceed from one theorist to another, after the fashion of most books on political theories, but from one topic to another. Towards the end of the book there is a comprehensive chapter on "Systematic Studies of Politics" in which the author lists and comments upon the more important books which have been written by American scholars in this field during the past half century.

The most striking feature of the present work is its comprehensiveness. The author's studies have penetrated every field of his subject, and so numerous are his references and citations that they furnish a complete bibliography of the literature of American political thought for the period 1865-1917. Even the poets and novelists are not disregarded, but their contributions to the movements of political thought in this country are noted and appraised.

The purpose of the book is such that the treatment is necessarily descriptive and expository. Hence there is little in the way of valuation. It occurs to one at times to ask just what are democratic principles, just why interpretations of democracy vary so much in time and place, and what is the explanation of the marked difference in the institutional deposits made by the democratic movement in various countries. To such questions Professor Merriam does not attempt to give answers, but he has performed thoroughly and well the task of making an orderly classification of American data, and his work is an indispensable guide to anyone undertaking a systematic consideration of political developments in the United States.

HENRY JONES FORD.

Washington, D. C.

*Democracy and Assimilation: The Blending of Immigrant Heritages in America.* By JULIUS DRACHSLER. (New York: The Macmillan Company. 1920. Pp. xii, 275.)

*The Unfinished Programme of Democracy.* By RICHARD ROBERTS. (New York: B. W. Huebsch. 1920. Pp. 326.)

*Steps in the Development of American Democracy.* By ANDREW CUNNINGHAM McLAUGHLIN. (New York: The Abingdon Press, 1920. Pp. 210.)

If, in President Wilson's phrase, the war against Germany was fought "to make the world safe for democracy," a great many writers are now trying to make democracy safe for the individual. A sufficient *raison d'être*, perhaps, for the three volumes grouped in this notice, is that any serious examination of fundamental political principles is worth while, particularly at this time when the strain of the war and the demands of an increasingly complex society are putting existing institutions to new and very severe tests. But apart from their *raison d'être* and the word "democracy" in their titles, the three books have nothing in common.

Mr. Drachsler's monograph is a companion volume to *Intermarriage in New York City: A Statistical Study of the Amalgamation of European Peoples*, which appeared recently in the Columbia University Studies. The data there was drawn from 100,000 marriage certificates and covered a five-year period (1908-1912) before the European War. The present book "attempts to supplement the purely objective study of the facts of ethnic fusion by an interpretation of their larger bearing upon public policies of assimilation." If the effects of race assimilation on democracy can only be ascertained by such statistical studies, Mr. Drachsler deserves much credit for his industry and his accuracy. He ventures tentative conclusions on the economic and cultural aspects of immigration, immigrant community life and organization, intermarriage among ethnic groups, and ethnic fusion and public policy.

The spiritual instead of the statistical approach to the problems of democracy is relied upon by Mr. Roberts, a Welsh clergyman. His discussion of the question is a sermon between boards. Many fine things are said which will command cordial agreement, but the specific program is rather vague. The problem is to set "the individual free without opening the door to individualism and anarchy;" this will be accomplished when we take seriously in hand "the task of clothing the political skeleton with a body of living social flesh." The tailor will be the British Labor Party (on the basis of its manifesto, *Labour and the New Social Order*) with assistance from the Guild Socialists and evangelists like Mr. Roberts, preaching that ethics are more important than economics and that the function of politics is to reconcile the two. That is a good text and Mr. Roberts is an eloquent, although somewhat vague, evangelist.

Professor McLaughlin's lectures delivered on the George Slocum Bennett Foundation at Wesleyan University a year ago, seek to describe certain basic American "doctrines and beliefs, some of which may have had their day, while others have not yet reached fulfillment." Like a great many generalizations on historical facts, Professor McLaughlin's lectures may seem more suggestive than convincing, but it is an excellent thing to have the landmarks in the development of American Democracy charted by such a competent scholar, and published for a larger audience than the students of Wesleyan University.

LINDSAY ROGERS.

*Harvard University.*

*Economic Democracy.* By C. H. DOUGLAS. (New York: Harcourt, Brace and Howe. 1920. Pp. 141.)

This volume is one of the many efforts put forth by inquiring minds during these days of reconstruction to diagnose the disease from which economic society seems to be suffering and to propose a remedy. While the book is small the reader will find nothing dwarfed about the ambition or courage of the author in dealing with his problem.

There is at the outset an analysis of the difficulties which at present prevent the realization of a true economic democracy, a democracy which is vastly more important to human welfare than any mere guarantee of political equality. The author believes that the root of the evil lies in the enormous centralization of economic power which has resulted from the modern movement for scientific management and efficiency. This centralization has produced a bureaucratic system in modern industry, under which the personal initiative of the individual has been sacrificed in order to secure perfection in the mechanical processes of production. This has resulted in a diminution of the psychological efficiency of the worker to whom the increased production of machine-made goods has brought some physical comforts but much discontent of mind. The problem of modern economic society is to retain the enormous benefits of mechanism for productive purposes but to secure an effective distribution of the results and restore personal initiative.

For the solution of this problem there is presented a plan for accomplishing the needed economic decentralization. The state and not the capitalist is to be entrusted with the duty of loaning money for purposes of productive industry. Such loans are to be limited to \$5000 to any

one person. Thus the number of persons who can establish and maintain plants will increase and personal initiative in industry will be revived. A scheme of cost accounting is to be installed and by means of it a "just price" for the product is to be determined based upon use-value. Just how this is to be accomplished is a question which will remain somewhat vague in the reader's mind.

The author has not succeeded in making his program stand out clearly. He is handicapped by an almost total lack of concreteness in method of presentation and a somewhat confusing use of various technical economic terms. The value of this book lies chiefly in the useful criticisms urged against our present economic system rather than in the proposed plan for reform.

ROBERT EUGENE CUSHMAN.

*University of Minnesota.*

*The History of Cumulative Voting and Minority Representation in Illinois, 1870-1919.* By BLAINE F. MOORE, Ph.D. Revised edition. (University of Illinois Studies in the Social Sciences, Vol. 8, No. 2. Pp. 70.)

This is a thoroughly well-made study of one of the very few experiments the American states have undertaken in the structure of representative government. It is just fifty years since Illinois rather courageously recognized that something was wrong with the single member district and plurality election scheme, and adopted for its larger house a device which, roughly speaking, assures the second party in any district one of the three members which the district returns, provided it can muster as much as one-fourth of the vote which the two cast together. In 1920 there met at Springfield a new constitutional convention, the first since 1870; one of whose proposals will pretty surely be the elimination of this device; and if the voters are allowed to act separately on it, as they did in 1870, they will quite surely adopt the recommendation.

Dr. Moore's monograph will make it unnecessary for the future inquirer to look further for the measure of success and failure that has attended Illinois' half-century of experience. After a brief introductory chapter calling attention to the progress of new forms of representation, and another on the circumstances of the adoption of the Illinois system, there follow two chapters of careful statement of the facts of experience, accompanied by five statistical tables. In these the student will find

digested all that figures can tell about the matter. Next come two chapters in which are discussed the effects of the system on the personnel of the legislature and on party organization, and a final one of summary and conclusions. Here Dr. Moore is conservative, and renders what, on the whole, is a Scotch verdict. That the plan has guaranteed representation to both the leading parties from all parts of the state in pretty much the true total proportions is clearly shown—nor is that a small gain. Illinois has avoided both the sectionalism between the north and the south of the state (which was probably the main purpose in 1870) and the sharp cleavage between a city Democratic and a country Republican party from which New York, for instance, suffers. Along with these, it has much reduced gerrymandering. On the other hand, it has not raised the character of the Illinois legislature above that of other legislatures subjected to similar economic pressure. It has not made it a better picture of the mind of the state. It has (like the three-cornered constituency scheme adopted three years earlier in Great Britain) increased the power of the party machine at the expense of the voter, at least in Chicago; and on this the Chicago critic would be likely to speak much more strongly than Dr. Moore does.

In conclusion, the reader should be reminded that the Illinois plan is not one of proportional representation. It assumes and perpetuates the two-party system, in a time when it has been increasingly evident that the two national parties have no real differences in the state, when the real differences have been between city and country, wet and dry, labor and manufacturers' association. When the time comes for trying to make the structure of our legislatures correspond better to the interests of the people of the state, the teachings of the Illinois experiment will be chiefly negative. That fact does not make Dr. Moore's work any the less valuable.

F. D. BRAMHALL.

*University of Chicago.*

*A New Municipal Program.* Edited by C. R. WOODRUFF. (New York: D. Appleton and Company. 1919. Pp. 392.)

For a volume written by a dozen authors *A New Municipal Program* exhibits an unusual degree of unity of purpose and of consistency. The contributors are: M. N. Baker, Richard S. Childs, John A. Fairlie, Mayo Fesler, William Dudley Folke, Augustus Raymond Hatton, Herman G. James, A. Lawrence Lowell, William Bennett Munro,

Robert Treat Paine, Delos F. Wilcox and Clinton Rogers Woodruff—surely a worthy galaxy. The book is not a compilation of articles previously published; on the contrary its chapters were written specifically for this work, and are directed to the end of elucidating various aspects of a program of constitutional and charter provisions previously agreed upon by the authors acting as a committee of the National Municipal League. Most of the papers are good; some of them are excellent; inevitably, however, where there are so many contributors, there is considerable variation in the matter of interest and of value. It is difficult to measure the influence which was exerted by the first program of the league adopted twenty years ago at Columbus. Since that time there has been in the United States a prodigious growth of interest in, knowledge about, and comment upon, municipal affairs. In view of this fact it will be even more difficult to estimate the results that flow from this later program. Certainly, however, it will be of no small service to those who seek its aid.

It is no criticism of the purpose and accomplishment of this volume to say that the heart of the American municipal problem does not lie wholly, or even chiefly, in such matters as the legal relations between the city and the state or the grant of municipal powers or the organic structure of city government. Important as these are, it is unquestionable that they have been and are being overemphasized. What we really need is not so much a new program as a new attitude of mind and a better understanding of the nature of the forces that must operate our legal programs. With this other and more serious aspect of our city problem this book does not purport to deal, although special mention should doubtless be made of President Lowell's eminently commonsense chapter on experts in municipal government. He recognizes that a combination of expert and lay elements is indispensable in a democratic government such as ours, that these elements are mutually antagonistic and that ultimate power must lie with the elected laymen. The most that a charter can do is to make expertness possible, perhaps even natural. It is a case of relational adjustment that cannot be written into law. He is nevertheless sanguine to believe that the layman lion and the expert lamb can be made to stand up and pull together. They sometimes do, but also they frequently do not.

HOWARD L. MCBAIN.

*Columbia University.*

## BRIEFER NOTICES

No book is provoking a more animated discussion among students of the social sciences at the present time than H. G. Wells' *Outline of History* (2 vols., Macmillans, pp. 648, 676). The author's task, as he himself sets it, is to tell, "truly and clearly, in one continuous narrative, the whole story of life and mankind so far as it is known today." But while these two volumes are plainly for the general reader rather than for the special student of history, it does not follow that they contain nothing beyond an endless parade of names and dates. Their chief value, indeed, is in the author's interpretation of what he writes about. Events are appraised and men are weighed in the balance as he goes along. Historians in general will not agree with some of these appraisals, nor will they credit Mr. Wells with an approach to infallibility in his judgment of the men who flit across his pages; but his estimates of the relative value of facts and forces can scarcely be brushed aside because they do not command general indorsement. On some matters, unhappily, Mr. Wells has allowed his iconoclastic proclivities to run away with him. Napoleon I, for example, cannot be disposed of as a second-grade "pestilence" because "he killed fewer people than the influenza epidemic of 1918" (II, p. 384); nor will the world believe, so long as it retains its senses, that Napoleon III was "a much more intelligent man" than his uncle (II, p. 438). Even the pinchbeck himself would have rebuked this insinuation. But when all is said, these two stout volumes embody a remarkable achievement. They contain astonishingly few historical inaccuracies of the customary type. The author's advisers, and a competent galaxy of scholars they are, have kept him clear of the pitfalls. The style is terse and forceful. Mr. Wells certainly has the gift of cogent exposition. Where, for example, can anyone find all pre-human history so vividly and clearly summarized as in the first seventy-five pages of this *Outline*? Nor is the author balked by the growing complexity of things after man appeared on this earth. His *coup d'oeil* over the whole range of human history from Adam and Eve to Harding and Coolidge is an astonishing success in point of clear delineation. It might better have borne the title "A Socialist's Interpretation of World History," however, for that is what it really is. The events are merely so many pegs on which to hang the eternal moral.

General Ludendorff continues his contributions to the history of the World War, from the German standpoint, by the publication of *The*



*General Staff and its Problems* (2 vols. E. P. Dutton & Co., pp. 721). The present work is not a narrative, like the author's *War Memories*, but a documentary history of the great conflict in its later stages. A preliminary chapter deals with the development of the German army and German war plans prior to 1914, and there are some rare admissions of German "preparedness" in these pages. The violation of Belgium's neutrality was completely planned, as the documents show, nearly two years before the war began. England's intervention was counted upon. A memorandum of December, 1912, signed by Von Moltke, then Chief of Staff, contains the following significant passage: "If we are to take the offensive against France, it would be necessary to violate the neutrality of Belgium. It is only by an advance across Belgian territory that we can hope to attack and defeat the French army in the open field. On this route we shall meet the English Expeditionary Force and—unless we succeed in coming to some arrangement with Belgium—the Belgian army as well. At the same time this operation is more promising than a frontal attack on the French fortified eastern frontier" (I, pp. 61-62).

The confidential letters, memoranda, and telegrams which passed between Main Headquarters, the Chancellor, and the Emperor are reprinted in all their nakedness, with explanatory footnotes and some running comment. For American students the documents relating to the unrestricted submarine campaign and the negotiations which preceded the armistice afford intensely live reading. They show that all was never serene below the surface. The military and political branches of the governments did not pull very well together. It is often said that the German general staff underestimated the part which an American army could play in the war, but broadly speaking this is not true. The documents prove that Ludendorff was well aware of America's resources, but he relied upon the admiralty's assurance that the transport of troops could be hindered and also upon the assurance of shipping experts that tonnage for the transportation of a large army was not available. Germany seems to have been well supplied with inaccurate statisticians and false prophets during these fateful years. The documents show that they went as far wide of the mark on foodstuffs as on submarines. Wilson's first notes in reply to the German requests for an armistice were thought by many in this country to be unduly lenient in their tone, but they came like quick thunderclaps to the masses of the German people. The intimation that no armistice could be considered unless it contained absolute guarantees for main-

taining "the present military supremacy" of the Allies was an eye-opener to those millions of simple folk from whom the truth had been hidden.

The condition of affairs in Germany during the war years, the squabbles over franchise reform, the financial difficulties, the ministerial crises and the growing obstreperousness of the Reichstag, are all accurately portrayed in these documents. As sources for the study of the real situation they are far more valuable than any man's memoirs or narrative, for they were written with no thought that they would ever reach the eyes of the world. Had Germany won the war, they would never have found their way into print. This history of a great nation's *débâcle* is here for those who can read between the lines.

Those who desire to know something about the inner maneuverings of British politics during the war years will find much to interest them in Colonel Repington's *First World War, 1914-1918* (2 vols., Houghton Mifflin Co., pp. xvii, 621, xiii, 581). The author, as is well known, served during the earlier years of the war as military critic of the *London Times*. His articles in that publication commanded wide attention, not only in England but on the Continent. He had unusually prolific and dependable sources of information, all of which he used to the full. His disclosures on more than one occasion brought important political events in their train. The present volumes, however, contain Colonel Repington's diary, not his war correspondence. Day by day he jotted down what happened, whether at the front or at home, and added his own comment or criticism. He lunched and dined everywhere and with everybody, always keeping his ears wide open. What a rare relish for every type of gossip this soldier-journalist and man-about-town possessed! Events which literally rocked the world rub shoulders in his diary with the small-talk of Mayfair drawing-rooms. Yet it is all live, spirited narrative and intensely interesting throughout, although the American reader would fain have been spared the daily recital of what the author ate, and where, and with whom. These gastronomic details are the only wearisome things in the book. Colonel Repington took no attitude of cold neutrality towards the political shufflings which went on at Westminster. He was a hot partisan. Kitchener, accordingly, fares badly at his hands and so do some others in high places. Taking it all in all, the Pepysian scope and quality of Colonel Repington's volumes should assure them a wide circle of readers. They will interest the politician not less than the soldier.

Some half dozen or more volumes relating to various aspects of the labor problem deserve mention in this REVIEW because they deal, in part at any rate, with matters of current political controversy. *Labor in Politics*, by Charles Norman Fay (pp. 284) is printed at the University Press, Cambridge, Mass. It is an endeavor to show the various methods by which class legislation is promoted in the United States. *Labor Problems and Labor Administration in the United States during the World War*, by Gordon S. Watkins, is published by the University of Illinois (2 vols., pp. 117, 247). The aim of the study is to present statistical and descriptive information concerning the numerous labor problems which arose in the United States during the World War and to outline the ways in which these problems were handled. The first volume is devoted to an enumeration and analysis of the difficulties; the second deals with the development of war labor administration. Both these divisions of the subject are treated in a comprehensive, accurate and interesting way. The work is a valuable contribution to the literature of federal administration in war time. *Labor's Crisis*, by Sigmund Mendelsohn (Macmillans, pp. 171) deals with the question of labor reform from the employer's standpoint. The author sets forth and analyzes the various suggestions made by labor leaders to remedy the present unrest. His discussion of the matter is not violently partisan; on the contrary it discloses a readiness to appreciate labor's point of view. Arthur Gleason's *What the Workers Want* (Harcourt, Brace and Howe, pp. 518) is an exhaustive study of British labor organization, its leaders, problems, methods and aims. Although himself an American, the author has devoted several years to the special study of economic and political conditions in Great Britain. His aim is to tell what the workers want, as judged by their own statements, not what the author or anyone else thinks they ought to want. From this point of view the book is interesting and important. The old industrial system in Britain, according to Mr. Gleason, was killed by the war. Something altogether different is being put in its place by a "gentle revolution of the good-humored British brand." Other countries, he believes, will copy the new industrial order as they have copied so many British institutions in the past.

*The Frontier of Control*, by Carter L. Goodrich (Harcourt, Brace and Howe, pp. 277) is a study which runs close to the main line of Mr. Gleason's book. Neither the employers nor the workers, the author points out, are in complete control of British industry today.

There is a No Man's Land in which the supremacy of neither is as yet finally determined. From the worker's side the frontier is being pushed forward and the question arises how far it will go. This is the main theme of Mr. Goodrich's book. The matter is one which has an obvious bearing upon future British politics. C. R. Fay's *Life and Labor in the Nineteenth Century* (Cambridge University Press, pp. 312) contains the substance of lectures delivered at Cambridge University in 1919 to special students of economics, among them many officers of the American Expeditionary Force. The volume embodies the fruits of much scholarly research; it is not a sketchy or superficial outline of the subject. There are excellent chapters on "The Influence of Bentham," "Chartism" and "The Revival of Socialism."

Under the title *The Frontier in American History* Professor Frederick J. Turner has brought together a series of thirteen essays written at various times and published in various places during the past two decades (Henry Holt & Co., pp. 375). These essays deal with a variety of topics, but they all radiate from a common center, which is the viewpoint of a scholar who looks upon western expansion as affording a key to the correct interpretation of political, social and economic history in the United States. Earlier historians and political scientists overlooked the profound importance of the frontier as a factor in the life of a growing nation; Professor Turner is rather in danger of over-stressing it. One of the essays in this volume may be particularly commended to students of American government as a clear and forceful presentation of a very important matter. It is entitled "Contributions of the West to American Democracy," and first appeared in the *Atlantic Monthly* seventeen years ago. The younger generation of American scholars may be in danger of forgetting the influence which the crude but red-blooded democracy of the expanding West exerted on the national life. Its backwash was felt even in the states which fringe the Atlantic seaboard. Professor Turner has done well to call attention anew to this important aspect of American political evolution.

Three new editions which have recently come from the press of the Macmillan Company are of marked interest to teachers and students of political science. Frederic A. Ogg's *Governments of Europe*, (pp. 775), which was first published in 1913, has been issued in completely revised form. A number of chapters dealing with the minor states of Europe have been dropped; on the other hand a much larger amount of space

has been devoted to the governments of Great Britain and France. The new German government is adequately described and a chapter on Soviet Russia is added. Hence the book has been substantially rewritten and is not merely a "revised edition" in the usual sense. A good book at the outset, it has now been greatly improved. Charles A. Beard's *American Government and Politics* (pp. 788) has been issued in a third edition. The general plan of the book has undergone no change but many details have been omitted and the governmental changes of the past few years have been incorporated. Arthur Lyon Cross has condensed his well-known volume on English history into a *Shorter History of England and Great Britain* (pp. 942). Chapters have been added to cover British participation in the World War. The curtailment has been largely in the political narrative; the excellent discussions of social, industrial, intellectual and religious movements are retained substantially as they appear in the author's larger work.

In spite of the implications of its title, John M. Mecklin's *Introduction to Social Ethics* (Harcourt, Brace & Howe, pp. 446) contains much material of direct interest to students of political theory and governmental reform. Chapter 2, which deals with American Calvinism and the religious background of our institutions, is especially worthy of the political scientist's attention. It is a highly suggestive argument, and some points in it are worthy of more extended discussion. But the author's omission to make mention of the notable article on the political theories of Calvinism which his colleague, Herbert D. Foster, contributed to the *American Historical Review* four years ago (Vol. 21, pp. 481-503), is somewhat surprising. Other things of considerably inferior value find a place in his bibliographical list. Professor Mecklin is not exactly at home, moreover, in dealing with that hackneyed topic "The Problem of the City." The chief conclusion one draws from his chapter on this subject is that there is no royal road to a mastery of the problem, even for a philosopher. Quotations from books published a dozen or fifteen years ago are dragged in as though they were fully applicable to municipal conditions of today. If the author has carried his study of municipal government beyond the college text-book stage, his discussion of suggested solutions for the problem of the city gives no evidence of it.

Two recent books deal with the closing era of Russian autocracy. Isaac Don Levine's *Letters from the Kaiser to the Czar* (Frederick A.

Stokes Co., pp. 264) is one of them. These letters should not be confused with the so-called "Willy-Nicky" correspondence which consisted of telegrams exchanged between Berlin and Pétrograd in the years 1904-1907. The present volume contains letters covering a period of twenty years, 1894-1914, which have not previously been published. They throw a flood of light upon Russo-German relations and demonstrate the persistent efforts made by the Kaiser to break down the solidarity of the Entente during the years prior to the war. No student of the recent period in European diplomacy can disregard this correspondence. The *Last Days of the Romanovs*, by George Gustav Telberg and Robert Wilton (Geo. H. Doran Co., pp. 428) contains a full and reliable narrative of what happened to the Russian imperial family from the abdication of the Tsar to the date of their final martyrdom. This narrative is accompanied by full transcripts of the testimony given by sworn witnesses (some of them eye-witnesses) at the investigation which the Kolchak government conducted during its short régime in Siberia. Being based upon documents and sworn testimony as well as personal enquiry this narrative is probably as close to the actual facts as the mysteries of the whole dramatic episode will ever permit. The authors believe that the German imperial government was not without direct responsibility for the affair.

The organization and work of the American Expeditionary Force during the years 1917-1918 are likely to be the theme of many books in days still to come. Two volumes which have appeared in this field during recent months are worth a place on the library shelves. *The History of the A. E. F.* by Captain Shipley Thomas (Geo. H. Doran Co., pp. 540) is as complete and detailed a story of America's military effort as the limits of a single volume would allow. It begins with Pershing's arrival in France and ends with the armistice. Additional chapters deal with the special aims of the service and the organization of supply. A most useful feature of the book is a brief history of each of the forty-three American divisions which went overseas. The concluding chapter indicates all the places of historical interest on the western front and many excellent maps are included in the volume. *The Army of 1918* by Colonel Robert R. McCormick (Harcourt, Brace and Howe, pp. 276) is a briefer work of more restricted scope. Its aim is to show in a general way how the army was recruited, trained and used. The narrative is a combination of history, personal experience, and critical observation. Technical operations are not discussed in detail

but many important questions of general military policy such as the relations of the regular army to the national guard and the future organization of our armed forces are handled in an open-minded and suggestive way.

The Clarendon Press has just published with some additional chapters, a translation of H. Vander Linden's *Vue générale de l'histoire de Belgique*. The English title is *Belgium—The Making of a Nation* (pp. 356). Beginning with the wars of Caesar's time the author carries the history of his country through mediaeval mist and legend to the modern age. Ernest Lavisse once testified that he knew no land with more glorious memories than Belgium. The glories of the little kingdom have been enhanced during the past half dozen years but M. Linden says nothing about this latest era. His book ends on the eve of the German invasion of 1914.

*The Political Philosophy of Robert M. LaFollette* (pp. 426) is a title which requires no elucidation. Compiled by Ellen Torelle, and published by the author himself, it contains extracts from the Wisconsin senator's speeches and writings on primary elections, taxation, railroad regulation, the initiative, referendum and recall, militarism, freedom of speech, equal suffrage and what not—a veritable encyclopedia of advanced political and economic doctrine, although much of it can hardly be termed "philosophy." The standpoint is one with which students of political science may not agree, but it is one which they cannot afford to ignore.

Selections from lectures which were delivered to various units of the American Army of Occupation in Germany during the early summer of 1919 by J. Travis Mills have been printed by the Oxford Press under the title *Great Britain and the United States—A Critical Survey of their Historical Relations* (pp. 68). The author explains that his lectures are not "propaganda" save insofar as the presentation of truth in place of prejudice may be called by that name. His review of Anglo-American relations, though necessarily condensed, is well put together and discloses no unreasonable bias.

The Carnegie Endowment for International Peace, through its Division of Intercourse and Education, has recently published a compilation of material on *American Foreign Policy* (pp. 128), being the statements

of various presidents, secretaries of state and other publicists, with an introduction by Nicholas Murray Butler. It has also printed a small volume on *The Project of a Permanent Court of International Justice and Resolutions of the Advisory Committee of Jurists* (pp. 235), edited by James Brown Scott.

The dean of American biographers, William Roscoe Thayer, has recently published *The Art of Biography*, a small volume of lectures delivered at the University of Virginia (Scribner's, pp. 154). The lectures deal with the biographers of antiquity, the middle ages and the modern era, the essential features of the art in each period being set forth and contrasted. A bibliography of outstanding biographies in all ages is appended. The reader with a taste for biographical literature will be interested in Mr. Thayer's selections.

*A Life of Arthur James Balfour*, by E. T. Raymond, better known as the author of "Uncensored Celebrities" has come from the press of Little, Brown & Co. (pp. 289). The book does not confine itself to Mr. Balfour alone, although his career supplies the main thread. The other leading English statesmen of the day slip in and out of its pages. All of them provide material for the author's facile and trenchant pen. The reader will find Mr. Balfour to be a rather more interesting personality than most of his fellowcountrymen have suspected.

A brief biography of *Theodore Roosevelt* by Edmund Lester Pearson (Macmillans, pp. 159) will appeal to many readers because it presents within reasonable compass and in a simple style, the life-story of a remarkable man. The book has been compiled from accessible sources and contains nothing that is new, but it will make a strong appeal to young readers by reason of its compact substance and clear narration.

*Laurier et son Temps*, being a life of Canada's former prime minister, by Alfred D. De Celles, is published by the *Librairie Beauchemin*, Montreal (pp. 228). It is a compact and well-written biography by one whose knowledge of Canadian political affairs during the past forty years gives him claim to write with authority on any phase of this subject.

The Century Company has brought out S. E. Forman's *American Democracy* (pp. 474), which is intended to serve as a text in govern-



ment in high schools, academies and normal schools. It is based upon an earlier work by the same author (Forman's *Advanced Civics*) but the changes are many and substantial. The present volume provides a text which those teachers who wish to place stress on the governmental aspects of national and community life will find worth their consideration.

*Guiding Principles for American Voters*, by Augustus Lynch Mason (Bobbs, Merrill Co., pp. 287) is devoted to a lucid explanation of many questions of the day. It discusses such topics as inflation, high prices, women in politics, novelties in government, the league of nations, government ownership and political parties. The pros and cons are set forth liberally but the author does not hesitate to give his own straight-from-the-shoulder opinions as well. It is a timely and interesting little book although it does not take the reader far below the surface of things.

In 1915 the United States Bureau of Education issued a bulletin on the teaching of community civics (Bulletin No. 23). Following the analysis of the subject set forth in this bulletin, Samuel H. Ziegler and Helen Jaquette have prepared an elementary text entitled *Our Community* (John C. Winston Co., pp. 240). The book will be useful to those teachers of civics who desire emphasis on such matters as public health, recreation, charities, civic beauty and the like. It is a significant indication of the present drift of things that only twelve pages are devoted to the organization and work of the national government.

In *The Passing of the New Freedom* (George H. Doran Co., pp. 169) James M. Beck discusses the evolution of President Wilson's political doctrines, and the application of these doctrines both at home and abroad. The book is a combination of pointed argument and keen satire. The discussion of "The Old Freedom" is one of the best short expositions of its sort. Two chapters of the book take the form of imaginary dialogues, and enable Mr. Beck to prove that this method of presentation can be very effectively used in political literature.

Messrs. Harper & Bros. have performed a useful service to students of American political development by making available, in a single volume, the series of excellent maps which were scattered through the twenty-eight volumes of the American Nation Series. Published under the title *Harper's Atlas of American History*, this volume contains one

hundred and twenty-eight maps, together with nearly one hundred pages of "Map Studies" prepared by Professor Dixon R. Fox of Columbia University. Both the maps and the studies cover every phase of American history and in every case the data has been brought down to 1920. The atlas is a welcome addition to the apparatus available for college teaching.

One of the best known books of our time in the field of social sciences is *Industrial Democracy*, by Sidney and Beatrice Webb. First published more than twenty years ago it still retains its unquestioned value as an authoritative treatise on British labor organization. A new edition (Longmans, Green & Co., pp. xxxix, 899) is now the publishers' response to a continued and ever-increasing demand for the book. In an introduction the authors point out the more important changes which have taken place in trade unionism during recent years.

A well-written and illuminating essay on *The American Supreme Court as an International Tribunal* by Herbert A. Smith, professor of jurisprudence and common law at McGill University has been brought out by the Oxford University Press (pp. 123). The essay aims to give, in brief compass, a reasoned summary of all the interstate cases which have been decided by the Supreme Court. It makes a useful companion to Dr. James Brown Scott's well-known compilation of these cases.

An anonymous volume entitled *The Sovereign Citizen* has been prepared by the Periodical Publishers' Service Bureau, New York City, (pp. 183) with the intention of stimulating the study of politics throughout the country by "Sound Administration Clubs." The book contains six chapters, all of which are devoted to the discussion of political parties, their functions, organization and activities.

Joseph K. Hart's *Community Organization* (Macmillans, pp. 230) is the outgrowth of the author's long experience in social and educational work. It deals particularly with the fundamentals of community organization for social work, giving relatively little attention to the political aspects of community planning.

The Russell Sage Foundation has issued a monograph on *Travelling Publicity Campaigns* by Mary Swain Routzahn (pp. 151). The book

contains an interesting account of some one hundred and thirty educational tours by train, trolley car, truck, motor car, wagon and boat, all of them undertaken to afford publicity to some worthy cause.

Professor John H. Wigmore of the Northwestern University Law School has recently published in a small volume entitled *Problems of Law*, (Scribners, pp. 136) a series of three lectures delivered last year at the University of Virginia. Two of the lectures deal with the evolution and mechanism of the law, the third with world-legislation and America's share therein.

An interesting volume by David Friday on *Profits, Wages and Prices*, (N. Y.: Harcourt, Brace and Howe, pp. 252) endeavors to explain who made the money that was made in the United States during the war. It also attempts a vindication of the excess profits tax from the standpoint of its economic soundness. But when the author pleads for government insurance of business profits, we suspect that business men and economists will join hands in opposition to the proposal. For the political scientists the administrative difficulties of such an undertaking are alone enough to condemn it.

Among recently published small volumes on various subjects which will doubtless interest some readers of the REVIEW but for which the limitations of space preclude any extended notice, the following may be mentioned: J. A. Hobson, *The Morals of Economic Internationalism* (Houghton, Mifflin Co., pp. 69); Arthur Sweetser, *The League of Nations at Work* (Macmillans, pp. 215); H. Vast, *Little History of the Great War*, translated by Raymond Weeks (Henry Holt & Co., pp. 262); R. H. Tawney, *The Acquisitive Society* (Harcourt, Brace and Howe, pp. 188); and Frank Edgar Melvin, *Napoleon's Navigation System* (D. Appleton & Co., pp. 449).

## RECENT PUBLICATIONS OF POLITICAL INTEREST

### BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

#### AMERICAN GOVERNMENT AND PUBLIC LAW

##### *Books*

*Babson, Roger W.* Cox—the man. Pp. 128. N. Y., Brentano's.

*Bartlett, William H.* Handbook of American government. Revised and enlarged by Henry Campbell Black. Pp. viii+162. N. Y., Thomas Y. Crowell Co.

*Beck, James M.* The passing of the new freedom. Pp. xi+169. N. Y., George H. Doran.

*Bishop, Joseph Bucklin.* Theodore Roosevelt and his time, shown in his own letters. 2 vols. Pp. 505; 516. N. Y., Scribner's.

*Bose, Sudhindra.* Fifteen years in America. Pp. 479. Calcutta, Mozumdar & Co.

*Bruce, Andrew A.* The nonpartisan league. N. Y., Macmillan Co.

*Chapple, Joseph Mitchell.* Warren G. Harding, the man. Pp. 94. Boston, Chapple Pub. Co.

*Commons, John R., and Andrews, John B.* Principles of labor legislation. Revised ed. Pp. xi+559. N. Y., Harpers.

*Cruikshank, Alfred B.* Popular misgovernment in the United States. N. Y., Moffat, Yard & Co.

*Dabney, Archibald Douglas.* Liquor prohibition. Pp. lvi+477. Charlottesville, Michie Co.

*Davis, Philip, ed.* Immigration and Americanization. Selected readings. Pp. xii+770. Boston, Ginn & Co.

*Democratic National Committee.* The democratic text book, 1920. Pp. 504. Washington, Democratic National Committee.

*Drinkwater, John.* Lincoln the world emancipator. Boston, Houghton Mifflin Co.

*Fay, Charles Norman.* Labor in politics; or, class versus country; considerations for American voters. Pp. xii+284. Cambridge, Charles N. Fay.

*Forman, S. E.* The American democracy; a text in government for use in high schools, academies and normal schools. Pp. xviii+474. N. Y., Century Co.

*Haines, Charles Grove.* The movement for the reorganization of state administration. (Govt. Research Series No. 17, Univ. of Texas, 1920.) Pp. 80. Austin, Univ. of Texas.

*Johnson, Willis Fletcher.* The history of the republican party; what it has stood for and what it stands for today. Pp. 118. N. Y., Century Hist. Co.

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*Lawson, John D., ed.* American state trials. Vol. XII. St. Louis, Thomas Law Book Co.

*Leary, John J., Jr., comp.* Talks with T. R.: from the diaries of John J. Leary, Jr. Pp. xiv+334. Boston, Houghton Mifflin Co.

*Lee, Gerald Stanley.* The ghost in the White House. Pp. 310. N. Y., E. P. Dutton Co.

*Marburg, Theodore, and Flack, Horace E., eds.* Taft papers on the league of nations. N. Y., Macmillan Co.

*Montgomery, Robert H.* Excess profits tax procedure. Pp. vi+351. Income tax procedure 1920. Pp. xii+1282. N. Y., Ronald Press.

*Morris, Charles E.* Progressive democracy of James M. Cox. Pp. 106. Indianapolis, Bobbs-Merrill Co.

*Murphy, Mabel Ansley.* American leaders. Pp. 194. Philadelphia, Union Press.

*National Association for the Advancement of Colored People.* Thirty years of lynching in the United States, 1889-1918. Pp. 105. N. Y., Nat'l Assn. for the Adv. of Colored People.

*Pepper, Charles M.* The life and times of Henry Cassaway Davis. Pp. x+318. N. Y., Century Co.

*Pettigrew, Richard Franklin.* The course of empire; an official record. Introduction by Scott Nearing. Pp. xii+700. N. Y., Boni & Liveright.

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*Terry, Charles Thaddeus.* Uniform state laws in the United States, fully annotated. Pp. 688. N. Y., Baker, Voorhis & Co.

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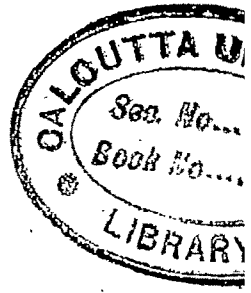
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## THE PRESENT STATE OF THE STUDY OF POLITICS

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The original plan of this paper included a general survey and critique of the leading tendencies in the study of politics during the last thirty or forty years. It was intended to compare the methods and results of the various types of political thought—to pass in review the historical school, the juridical school, the students of comparative government, the philosophers as such, the attitude of the economist, the contributions made by the geographer and the ethnologist, the work of the statisticians, and finally to deal with the psychological, the sociological, the biological interpretations of the political process.

It would have been an interesting and perhaps a useful task to compare the scope and method of such thinkers as Jellinek, Gierke, Duguit, Dicey and Pound; the philosophies of Sorel and Dewey, of Ritchie and Russell, of Nietzsche and Tolstoi; to review the methods of Durkheim and Simmel, of Ward and Giddings and Small; of Cooley and Ross; and to discuss the developments seen in the writings of Wallas and Cole.

It would have been useful possibly to extend the analysis to the outstanding features of the environment in which these ideas have flourished, and to their numerous and intimate relations and interrelations. It might have been possible to discuss

the influence of social and industrial development, of class movements and struggles, or of group conflicts in the larger sense; to examine the influence of urbanism and industrialism; of capitalism, socialism and syndicalism; of militarism, pacificism, feminism, nationalism. It would perhaps have been useful to offer a critique of the methods and results portrayed; to make a specific appraisal of the value of the logical, the psychological, the sociological, the legal and the philosophical and the historical methodologies and their respective contributions to the study of the political.

This task was abandoned, however, and reserved for another occasion, as it became evident that no such survey could be condensed within reasonable limits. It seemed that our common purpose might be better served by a different type of analysis, aiming at the reconstruction of the methods of political study, and the attainment of larger results alike in the theoretical and the practical fields.

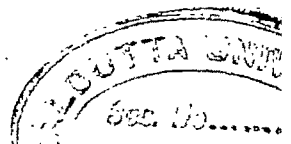
Within relatively recent times the theory of politics has come in contact with forces which must in time modify its procedure in a very material way. The comparatively recent doctrine that political ideas and systems—as well as other social ideas and systems—are the by-products of environment, whether this is stated in the form of economic determinism or of social environment, constitutes a challenge to all systems of thought. It can be ignored only under the penalty of losing the *locus standi* of a science. Systems may justify themselves as sounding boards of their time, but what becomes of the validity of the underlying principles usually announced with dogmatic and authoritarian emphasis?

Again, in our day the measuring scales of facts and forces have been made much finer and more exact than ever before in the history of the race. The measuring and comparing and standardizing process goes on its way, impelled by the hands of thousands of patient investigators who pursue the truth through the mazes of measurable and comparable facts. To what extent has this increased accuracy of measurement and facility in comparison of standardized observation found its way into the field of the political?



Further, on the borders of politics there have appeared in our day many allied disciplines of kindred stock. Statistics and psychology, biology, geography, ethnology and sociology have all developed and continue to produce masses of material facts, of interpretations and insights, correlations and conclusions, often bearing, directly or indirectly, upon the understanding of the political process. We may appropriately raise the question, to what extent has politics availed itself of the researches and results of these new companions in the great search for the understanding of the phenomena of human life?

Certain suggestions as to ways and means by which the technical and professional study of politics may be improved in quality and serviceability are worth some discussion. There is the question of a mechanism for the collection and classification of political material. In many ways politics has been outstripped in the race for modern equipment supplying the rapid, comprehensive and systematic assembly and analysis of pertinent facts. For business reasons the collection of certain limited classes of legal data has been systematized, and the results are promptly placed before every student of the law. For business reasons certain types of industrial data are now collected in great quantities for the use of the business man. Some of the same work is done by various bureaus of the governments. Yet in the main the political machinery is still sadly defective. The best equipped research man in the best equipped institution of learning hardly has machinery comparable with that of the best lawyer in his office, or of the best engineer, or the expert of the large corporation, or the secretary of the chamber of commerce, or the research department of the Amalgamated Clothiers. The truth is that he often has no laboratory equipment at all, and curiously enough in these days of large scale organization, he labors single-handed, even when he discusses this characteristic feature of our civilization. In this respect the political and social sciences have been generally outstripped by the so-called "natural" sciences—now often dropping the "natural"—which are far better supplied with the personnel and facilities for research.



On a larger than individual scale, there is a lack of prompt and adequate collections of great classes of laws, orders and rules. The admirable collection of the New York State Library has been discontinued and the gap never filled. The same thing is true of municipal ordinances, collections of administrative regulations, and judicial data except for reported cases. On an international scale the field is scarcely touched. It is not to be expected that political data for scientific purposes should be as quickly gathered as crop reports or legal decisions, but need the data be as scantily and infrequently reported as is now the case?

Further, the reasonably complete and prompt collection of material regarding the practical workings of political institutions is largely unorganized and only spasmodically assembled, often by propaganda agencies rather than by scientific bodies. How, for example, is material made available at present regarding the workings of the system of proportional representation, or the city manager plan of government? Chiefly by the haphazard, irregular and unsatisfactory process of observation and compilation by inadequately equipped individual workers. There is neither fund nor personnel available for extended surveys of many important fields regarding which politics should speak with some authority.

Only through the organized and persistent effort of many scholars can this defective situation be made a satisfactory one. With the coöperation of the various governmental agencies, of the several institutions of learning, and perhaps of private research funds, the workers in political science may be placed on a basis where necessary data and assistance will be available for technical use. But until then we limp where we might run.

It is not impossible that political prudence might be more effectively organized than at present. By political prudence is meant the conclusions of experience and reflection regarding the problems of the state. This constitutes a body of knowledge which, though not demonstrably and technically exact, is nevertheless a precious asset of the race. Of course it is not meant to suggest that all of this prudence is found with the professional students of politics—God forbid—but the initiative in the scientific assembly and analysis of this material may fairly be said

to be one of our tasks. Certainly this falls within no other domain. It seems desirable that this mass of information, analysis, conclusion, tentative and dogmatic, accumulated by the professional students of politics should be more fully known than at present. All other groups, professional and otherwise—and there are many new ones in the last generation—express their views upon all manner of questions of state; why not the student of politics who is usually most nearly disinterested in his point of view, more comprehensive in his investigation, and impartial in his conclusions?

What is the judgment of the world's students of politics upon such problems as proportional representation, "the" or "a" League of Nations, freedom of speech under twentieth-century conditions, public ownership of public utilities—these only by way of suggestion? In many instances the counsels of professional students of politics, or of political prudence, would be divided, particularly when class, racial or nationalistic issues were raised, but in many other instances they would be united. Even their divisions would presumably rest upon at least superficially scientific grounds, and would help to turn the organization of opinion upon carefully investigated facts and careful reasoning, rather than upon group interests awkwardly disguised in ill-fitting garb. But if professional students of politics cannot come together to discuss even the fundamentals of political prudence because of the fear of violent disagreement, should not that circumstance itself cause sober reflection as to their fundamental preconceptions; and might it not suggest remodelling and reorganization of their methods? Might it not point to the weak spot in their procedure and in time lead to its strengthening?

That professional students of politics should upon all occasions and upon every transient issue rush to announce their theories and conclusions with an air of finality, is certainly not to be desired. But upon grave questions of long standing, where exhaustive inquiries have been made and all phases of a problem maturely considered, the professional opinion of special students has a certain value. Further, if students were equipped with

resources for exhaustive researches through expert commissions on occasional topics, such documented inquiries and the deliberate findings based upon them might prove to be of very great use. Practical experience and observation do not lead to the conclusion that electorates or parliamentary bodies or administrative agencies are waiting breathlessly for the pronouncements of political science associations; but on the other hand the same experience and observation do suggest that they would on many occasions welcome the very sort of information, analysis and tentative conclusions of political prudence that serious professional organizations of this type could supply.

The broader the base of such a professional organization, the more effective it should be. An organization of many cities would be better than one, of many states than one, of many nations than one. For in the larger unit there is an opportunity for the elimination of the local, the class, the racial propagandas that have historically played so large a part in the formation of political theory.

Finally the methods of politics, as of social science in general, are constantly in need of scrutiny and revision in order to avoid falling into a category that is neither scientific science nor practical politics. Of the extent to which political theory has been conscripted in the service of class and race and group we have been admirably informed by Professor Dunning. A much earlier writer says:

In law what plea so tainted and corrupt  
But, being seasoned with a gracious voice  
Obscures the show of evil? In religion  
What damned error, but some sober brow  
Will bless it and approve it with a text,  
Hiding the grossness with fair ornament?

But that day perhaps is passing. The average man now possesses an acid test for the authoritarian doctrines which in some earlier ages he would not have been permitted to discuss, or more probably would not have thought of discussing. He begins to realize that in the excitement of racial or religious or

class struggle, political theory is likely to become a pawn or piece in the larger game of military, pecuniary, or other group advantage. So it happens that we live in a time when social contrivances and control are employed more than ever before in systematic fashion, but also in a time when authority is challenged as never before. At a time when political regulation is most comprehensive, political obligation is least firmly rooted.

Sociology and social psychology offer material of the greatest value. Geography, ethnology and biology present facts and conclusions indispensable to a correct understanding of the political process, which tend to make the knowledge of that process less closely dependent upon authoritarian propaganda, and nearer the domain of scientific technology.

Statistics increase the length and breadth of the observer's range, giving him myriad eyes and making it possible to explore areas hitherto only vaguely described and charted. In a way, statistics may be said to socialize observation. It places a great piece of apparatus at the disposal of the inquirer—apparatus as important and useful to him, if properly employed, as the telescope, the microscope and the spectroscope in other fields of human investigation. But whether politics has made full use of this new instrument of inquiry may be questioned.

In the narrower sense, there are standard fields where political statistics are almost completely lacking. Notable examples in this country are our judicial and criminal statistics. In the field of operative statistics, measuring services on standardized bases, little has been done. It is a legitimate function of the political scientist to aid in the development of statistical schedules, and to ask for additional information which can be developed only in this way. In the larger sense, we have not yet surveyed the possibilities of statistical observation, and fitted it to the growth of the study of politics.

Statistics, to be sure, like logic can be made to prove anything. Yet the constant recourse to the statistical basis of argument has a restraining effect upon literary or logical exuberance; and tends distinctly toward scientific treatment and demonstrable conclusions. The practice of measurement, comparison, standard-

ization of material—even though sometimes overdone—has the effect of sobering the discussion. We do not look forward, it is true, to a science of politics or of economics or of sociology based wholly and exclusively upon statistical methods and conclusions. We know that statistics do not contain all the elements necessary to sustain scientific life; but is it not reasonable to expect a much greater use of this elaborate instrument of social observation in the future than at present? Is it unreasonable to expect that statistics will throw much clearer light on the political and social structure and processes than we now have at our command?

Modern psychology also offers material and methods of great value to politics, and possibilities of still greater things. The statesmen and the politicians have always been psychologists by rule of thumb, and the political scientist and the economist have often tried to apply such psychology as their time afforded. The "natural" man of the *Naturrecht* school and of the classical political economy was described in the light of such information as the psychology of the day afforded. But undoubtedly Thorndike and others can tell us more about the *genus homo* than was given to Thomas Hobbes and Adam Smith. Even the psychologists—if we may accept the statements of some of them—have not always been strictly psychological in their method. The field wherein the physiologist and the behaviorist and the neurologist and the psycho-analyst and the biologist and the psycho-biologist are still busy evolving a method is a domain not yet reduced to constitutional order and government. But these new inquiries seem likely to evolve methods by which many human reactions, hitherto only roughly estimated, may be much more accurately observed, measured and compared.

They are likely to assist in the evolution of methods and means by which new relations will be discovered, new modes of adaptation contrived, and the processes of social and political control substantially modified. They are already suggesting methods by which much more accurate measurement of the human personality may be made, and much deeper insight into the social process be secured. Their work is likely to be supplemented by

that of group psychology; and somewhere along the line there may be developed the study of the political personality and process, and the aspects and bearings of political psychology, which has long existed in name and in practical fact, but not in systematized form. We seem to stand on the verge of definite measurement of elusive elements in human nature hitherto evading understanding and control by scientific methods. In certain fields, such as those of education and medicine, the lines have already been thrust far out into the realm of what had always been charted as the Great Unknown. Psychology, of course, like statistics does not assume to set up the standards of social science, but is an instrument or method by which students in these fields may be materially assisted.

It is not impossible that we may have, in addition to the broad observational study of unstandardizable forces and tendencies, playing so large a part in political prudence, a more basic study of measurable and comparable political reactions, of their strength and limitations, of their possibilities of adaptation and constructive organization. This more intensive study may help to solve: (1) the problems of preliminary political education, (2) of public education in the larger sense of the term, (3) of local political coördination and organization, and (4) of scientific technology. The statistical use of psychological material offers to the student of politics large areas hitherto unexplored, and insight into springs of political action up to this time only imperfectly observed.

From time to time the study of politics has been completely abreast with the current science of the time, as in the days of Aristotle, and from time to time has drifted away again into scholasticism and legalism of the narrowest type. Writers like Wolff and Thomasius, Suarez and Pufendorf, Woolsey and Sidgwick, have left us great monuments of industry and erudition. They, like many others, were of great value in the general rationalizing process of the time, but were sterile in the production of living theories and principles of political action. In our day the cross fertilization of politics with science, so called, or more strictly with modern methods of inquiry and investigation, might not be unprofitable.

In the study of international law, for example, may we not go behind treaties and conventions into a deeper study—not only of what are commonly called social and political forces, into differences of environment, language and culture—but also into a systematic examination of race and group loyalties and aversions, their genesis, strength, their modes of adaptation and organization? Instinctively the stranger is the enemy. But what has modern political science to say about the nature of this instinct and the possibilities of training, education and reorganization of it? What have the world's students of politics and kindred sciences to say upon this problem, the solution of which bears so closely upon world organization and world peace?

We have studied the urban problem in terms of "good" and "bad" government, of boss rule and reform, of innumerable mechanisms and contrivances ingeniously devised, but is it not possible to go more deeply into the basis of the city, scrutinize more accurately the social and political process of which the political is an integral part? Are the forces producing municipal misrule inherently recalcitrant and insuperably unruly, or do we not fully understand the political reactions in the given environment, and how they may best be educated and constructively adapted to new modes of life under the forms of the coöperative enterprise of democracy?

In the study of public administration may we not add to the study of rules and laws and forms of procedure and control some deeper insight into the underlying factors affecting and conditioning personnel and organization and operation of large groups of men? Will not the methods of statistics and psychology be of service to us in the prosecution of such inquiries?

In short, may we not intensify our study of the political man, the political personality, of his genesis, environment, reactions, modes of adaptation and training, and the groups of which he is a part, and of the complicated political process, to a point where the preconceptions of politics will be given a far more definite fact basis, and practical prudence a far surer touch in its dealing with the problems of state?



We may be reminded of the weird anthropology in the politics of Bodin and Montesquieu, or of Bluntschli's fearfully and wonderfully made "political psychology," in which he compared sixteen selected parts of the human body with the same number of organs of the body politic, or of the ambitious but abortive social physics of Comte, or of the array of organismic theories which Dr. Coker has so comprehensively catalogued—all these to point the danger of advancing beyond the line of strictly authoritarian or tendential and prudential politics. But on the other hand we may point to many penetrating studies in social and political organization. We may call attention to the surprising practical advances made by criminology and penology, and to the daily practical applications in social and industrial relations of information and methods drawn from the newer disciplines.

Must we conclude that it is possible to interpret and explain and measurably control the so-called natural forces—outside of man—but not the forces of human nature? Or have we overdone "nature" and underdone "man" scientifically? Is there some fundamental line of division between the cultural, the humanitarian, the scholarly, the "learned", on the one hand, and the scientific (in quotation marks) on the other, so that their methods must be fundamentally different? Perhaps it is so.

It is now nearly thirty years since the great naturalist Le Conte pointed out that art comes first, then science; then science like a daughter helps the mother. Hitherto, said he, "Social art has advanced in a blind staggering way, feeling its way in the dark, retrieving its errors, recovering its fall." But this cannot longer be. He continues: "Science must be introduced into politics only as suggesting, counselling, modifying, not yet as directing and controlling." Science "ought to be strictly subordinate to a wise empiricism. She must whisper suggestions rather than utter commands."<sup>1</sup>

For our purposes it is not necessary or possible to read the future of social or political science. It is sufficient to say that

<sup>1</sup> In Brooklyn Ethical Association, *Man and the State*, 351-353.

we may definitely and measurably advance the comprehensiveness and accuracy of our observation of political phenomena, and that the processes of social and political control may be found to be much more susceptible to human adaptation and reorganization than they now are.

Here we are confronted, however, as at other points by the urgent practical necessity for better organization of our own professional research. It would be possible, both nationally and internationally, to coördinate much more closely the scattered undertakings in charge often of isolated observers and workers. The political research of our nation and of others is ill-organized, especially for a branch of knowledge that deals with organization and administration as one of its central topics. As a result, even though the available forces are small, there is some duplication of effort. There are large gaps left where there is no investigation made, and there is general lack of organized effort to break through the lines of political ignorance and prejudice. We lack comprehensive and forward looking plans, following which we might advance by measurable stages in certain directions at least. If the mortality among students of politics is high because of the ravages of university administration and politics, there is all the more reason for husbanding carefully our resources, and making the most effective use of them. And if the endowment of political research is more difficult because it must compete with other objects touching less closely, or seeming to, the nerves of the social and political order, there is all the more reason for explicit statement of definite plans and for continued pursuit of the means to carry them out under public or private auspices;

These suggestions are offered in conclusion:

1. More adequate equipment for collection and analysis of political material;
2. More adequate organization of the political prudence of our profession;
3. The broader use of the instruments of social observation in statistics, and of the analytical technique and results of psychology; and closer regard to and relations with the disciplines of geography, ethnology, biology, sociology and social psychology.

4. More adequate organization of our technical research, and its coördination with other and closely allied fields of inquiry.

Quite properly a bill of particulars might be called for, but this paper is only in the nature of a declaration, and specific statements are the next step in the case. What has been said is wholly vain unless it has been understood to emphasize above everything else the crying need for organization and coördination of effort both in general method and with specific reference to the activities of our professional societies.

Science is a great coöperative enterprise in which many intelligences must labor together. There must always be wide scope for the spontaneous and unregimented activity of the individual, but the success of the expedition is conditioned upon some general plan of organization. Least of all can there be anarchy in social science, or chaos in the theory of political order.

## THE TECHNIQUE OF THE PLURALISTIC STATE

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(What is the pluralistic theory of the state? Roughly speaking, we may identify the pluralistic theory as that theory which denies the logical validity and the practical and moral adequacy of the traditional doctrine of state sovereignty, or of the doctrines of sovereignty which have prevailed since the eras of Bodin and Hobbes, and have in a peculiar degree dominated political thought since the time of John Austin.) Although the pluralist dogma does not take precisely the same form for all of its adherents, views held in common by them all are to be found in the chief criticisms which they offer against what they regard as the now prevailing notions of state authority and competence. The pluralists maintain that sovereignty is not, in any community, indivisible, and they deny that the state either is or ought to be sovereign in any absolute or unique sense. They cite many facts of recent political and social experience to discredit the belief that the state does persistently exercise sovereignty over other essential social groups; they argue that the tendency of social and industrial change today is in the direction of a progressive weakening and narrowing of state power; and they hold that the effect of a still further disintegration and decentralization of authority will be to improve the economic, moral and intellectual well-being of man and society.<sup>1</sup>)

We can not here explore at length the genesis of current pluralistic doctrines. Briefly, they appear to be in part the

<sup>1</sup> An excellent analysis of recent pluralistic theory is that contained in the sympathetic, though at some points adverse, criticism by Miss M. P. Follet, in chapters 28-32 of her volume *The New State* (New York, 1918). The article by Miss E. D. Ellis, on "The Pluralistic State" (*American Political Science Review*, August, 1920, pp. 393-407) presents another useful exposition and criticism of the doctrine.

culmination of a trend in legal theory—chiefly from Germany and England—confirmed and modified by a later and somewhat parallel trend in economic doctrine—chiefly from France. The latter movement, in economic doctrine, is to be sketched later in this article under the heading, "Syndicalism." In the former field we have the theory of the real personality of corporate associations within the state. The German jurist, Otto Gierke, writing about half a century ago, developed not only the historical aspects of this conception, but maintained that correct political theory requires that we regard the personality of certain essential corporate associations not as artificial or fictitious, as a mark to be granted or withheld by a sovereign state, but as real and natural, inhering in such associations and evolving independently of, and prior to, state action.<sup>2</sup> In England this view was developed by F. W. Maitland, who in similar terms insisted upon the "real personality, the spontaneous origin, the inherent rights of corporate bodies within the State."<sup>3</sup> Still later Dr. J. Neville Figgis, although his practical interest has been primarily in the rights of ecclesiastical groups, has maintained the rights of associations generally against the prevailing creed of state omnipotence.<sup>4</sup> The writings of Figgis present, perhaps more effectively than any other writings, the doctrine that the smaller communities and lesser associations within the state possess a corporate life arising naturally and inevitably from the associational instincts of mankind; and his writings eloquently oppose the efforts of statesmen and lawyers to invade the proper spheres of these associations and to prevent their development according to their inherent spirit and tendency.) (He opposes the notion which regards the state and the individual as the only political entities, and divides activities into public—those of the state—and private—those of individuals and associations—and he

<sup>2</sup> The views of Gierke appear in his *Das Genossenschaftsrecht* (1863) and his *Die Genossenschaftstheorie* (1887).

<sup>3</sup> Maitland's views are found in his introduction to his translation of Gierke's *Political Theories of the Middle Ages* (Cambridge, 1900: a translation of a section of the *Genossenschaftsrecht*) and in various passages in his *Collected Papers*.

<sup>4</sup> For Figgis' view see especially his *Churches in the Modern State*. (London and New York, 1913).

maintains that the collective activities of individuals, through such organizations as churches and trade unions, partake more of the nature of public than of private activities. He characterizes the state as "an ascending hierarchy of groups, family, school, county, union, church, etc., etc."<sup>5</sup>

[The ideas of Gierke, Maitland, and Figgis supply the starting-point for the pluralistic theory. But their own doctrines are not fundamentally pluralistic.] The state is not by them represented as one among a number of equal or coördinate associations. They recognize the distinctive function and superior authority of the state as an agency of coördination and adjustment. The state is the "*communitas communitatum*." According to Figgis, one of the chief elements in the importance of the various smaller groups is that they foster not only individual development but also "loyalty to the great 'society of societies' which we call the State."<sup>6</sup> Each of these groups must by the state be restrained from acts of injustice towards one another or towards individuals; and "it is largely to regulate such groups and to ensure that they do not outstep the bounds of justice that the coercive force of the State exists."<sup>7</sup> Such views should be characterized as doctrines of political federalism rather than of political pluralism. But the influence of such views upon the ideas of the pluralists is unmistakable, and the connection is insisted upon by the pluralists. As leading representatives of the latter we may take Léon Duguit in France and Harold J. Laski for this country and England. Their views have been so frequently reviewed that no elaborate analysis of the more formal aspects of their systems is now necessary.

The state, according to Duguit,<sup>8</sup> is not sovereign, because it is subject to limitations; and these limitations are not merely

<sup>5</sup> Figgis, *Churches in the Modern State*, p. 87.

<sup>6</sup> *Ibid.*, p. 49.

<sup>7</sup> *Ibid.*

<sup>8</sup> The pluralistic theory of Duguit is set forth in parts of almost all of his works. See especially his *Manuel du Droit Constitutionnel* (2nd ed., 1911), and his *Transformations du Droit Public* (1913). The latter work has been translated by Frida and Harold Laski, under the title *Law in the Modern State* (New York, 1919); this translation is marred by numerous errors in rendition.

moral limitations. The state is subject to law (*droit*.) Law is not the creation of the state; it is superior to and anterior to the state. (The basis of law is social solidarity or social interdependence; by virtue of the fact that men have common needs whose satisfaction can not be assured except by social life, and different aptitudes which can supply such needs only by a reciprocal exchange of services, men in society are subject to certain rules of conduct.) (These rules embody a general obligation to do nothing which weakens social solidarity and to do everything which tends to realize and develop social solidarity.<sup>9</sup>) Expressed more concretely, the state is subject to definite obligations of a legal, or jurál (*juridique*) sort. For law is merely an expression of the demands of social opinion, to formulate and enforce such demands being the special task of the state. The state is subject to legal limitation because social opinion does as a clear matter of fact demand that certain tasks be accomplished by the state, that certain public services be organized in such way as to avoid all dislocation.<sup>10</sup>

Moreover, Duguit maintains that there is no such thing as a national will and no such thing as a single sovereign organization expressing and executing the decisions of a supposed national will. (He admits that the earlier typical functions of the state were such as perhaps required for their due fulfillment the notion of a supreme power issuing commands and exerting only coercion to enforce its commands; political functions were primarily those of justice, police, and defence. But the business of the state today goes far beyond the provision of such services; government is now called upon to perform a variety of activities necessary to the development of individual well-being; and in fulfilling these newer tasks—many of them of an industrial character—government's most important acts are no longer essentially related to the power to command and coerce, which is the distinctive quality of sovereignty. (As the characteristic attribute of the state today, the idea of public service must replace the idea of sovereignty.) Whatever power the state may legiti-

<sup>9</sup> Duguit *Manuel du Droit Constitutionnel*, pp. 49-51, 69-79.

<sup>10</sup> Duguit *Transformations du Droit Public*, chs. 1-3.

mately exert, it possesses only by virtue of the relation of such power to the provision of public services in response to social needs; the acts of those who govern create no obligation and have no legal validity save as they contribute to such an end.<sup>11</sup> Those who govern are "simply managers of the nation's business."<sup>12</sup> Thus no organ of the state is sovereign, and the imposition of restraint is not the typical means whereby the state secures its ends.

Laski's main criticisms are directed against two alleged principles of the prevailing theory of state sovereignty: first, that the power of the state over individuals or smaller social groups is actually absolute, and, secondly, that the state is morally entitled to its assumed position of preëminence in society.<sup>13</sup> In Laski's attack he thus, in the first place, shows, with great ease, that there is never in any community any one source of authority which is certain of unvarying obedience. There are always things which the state does not do, and can not do, because of opposition from the conscience or will of some part of the community. In the second place, the state has, as compared with other social groups, no superior claim to the individual's allegiance. "The state is only one among many forms of human association."<sup>14</sup> A church or trade union may properly be of fully as much practical and moral importance to an individual, and as much "in harmony with the end of society," as the state is. The state should recognize this; it is not morally justified in trying to impose by force its special demands when there is conflict between its objects and those of other organizations within the community. In case of such conflicting demands the state should seek only to win allegiance by reason and moral suasion—not by physical compulsion. Its preëminence over other associations in any occasion of conflict depends solely upon its superior claim in that particular instance.

<sup>11</sup> Duguit, *Transformations du Droit Public*, introduction and ch. III.

<sup>12</sup> Duguit, *Law in the Modern State*, p. 51.

<sup>13</sup> Laski's general theory is found chiefly in his *Problem of Sovereignty* (New Haven, 1917), especially chapter I and appendix A, and his *Authority in the Modern State* (New Haven, 1919), especially chapter I.

<sup>14</sup> Laski, *Authority in the Modern State*, p. 65.

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Laski thus, unlike Duguit, hardly concerns himself at all with the question of the legal power of the state. He does not consider it worth while to assail the state's claim to legal sovereignty. He seeks to disparage state importance in this matter not by denying legal sovereignty but by asserting its unimportance; the concept of legal sovereignty is, he holds, a "barren concept;" merely legal sovereignty is "without practical utility."<sup>15</sup>

How do Duguit and Laski show the actual working of the pluralistic theory? What are the evidences which they offer to prove that within any community there is no single organization of supreme authority, and that state power is now a variously limited power?

For the most part Duguit finds his evidences within the field of governmental action, although they are greatly varied here. He does not primarily desire to emphasize the significance and dignity of nonpolitical social groups; his main effort is to show first, that the making of statutory law (*loi*) is not the exclusive prerogative of any one organ in the state, and secondly, that each organ of state action is a legally limited agent or, because it logically should be, is in the way of becoming such. His evidences, chiefly from the operation of the French governmental system, are presented under three main heads: (1) the nature and origin of the statutes (*lois*) of the state, (2) the judicial limitations upon administrative action, (3) the developing recognition of the principle of state responsibility.<sup>16</sup> Concerning statutes, he maintains that the obligation to obey statutes and the right to enforce them rest not upon their supposed sovereign origin, but upon the fact that the statutes embody rules which are the formal expression of social facts; in other words, statutory laws are obligatory in character not because of their sovereign origin but because of the objective ends which they serve. To prove this he shows that in France agencies other than Parliament issue general commands accepted by the court as legally valid if directed towards legally valid ends. He cites such examples as the following: the power of the President of the

<sup>15</sup> Laski, *Problem of Sovereignty*, p. 269.

<sup>16</sup> Duguit, *Transformations du Droit Public*, chs. 3-7.

Republic to issue independent ordinances, unrelated to the execution of statutes passed by Parliament; the power of communal authorities to issue local ordinances sustained by penal sanctions; the power of local administrative authorities to enter into statutory agreements (*lois-conventions*), of a noncontractual character, with utility companies; the power of civil servants in some governmental departments and institutions to participate in the general direction and control of the respective departments or institutions.

Duguit's examples of judicial limitation on administrative discretion are so obvious and unimportant that we are not justified in analyzing them here. The same can be said of his demonstration of the development of state responsibility, where he cites judicial decisions holding administrative officials personally liable for injurious acts done out of relation to the duties of their respective offices; or points to instances of the acceptance by the state itself of liability for injurious acts of its administrative agents done within their competence and done without fault; or, finally, points to a tendency on the part of the Council of State to declare, and on the part of Parliament to acknowledge, the existence of a responsibility of Parliament in cases where injury is suffered by private parties from acts of Parliament placing restrictions, in the interest of the public, upon private activities not in themselves noxious.

It is difficult to perceive relevancy or force in the instances described by Duguit to demonstrate the actual working in France of his pluralistic hypothesis. In the first place, most of his examples of legally limited authority relate to obviously subordinate governmental agents exercising delegated powers. In the second place, where reference is made to legal obligations resting upon higher authorities more immediately representative of the state, he indicates no means of defining or enforcing such obligations; indeed he acknowledges that there is, in most cases, no method for compelling even inferior officials to conform to decisions of the Council of State nullifying their acts on the ground of *ultra vires* or abuse of power. Finally, throughout all his discussion he disregards any distinction between state

and government; and even if he be not held strictly to a discrimination between these two terms, yet he generally admits that the notion of the limitedness and responsibility of Parliament (an organ of government) is not an ideal that has as yet in any clear way received formal recognition.<sup>17</sup>

"The instances discussed by Laski to prove his contention that the source of ultimate control in society is plural, not single, are drawn from a somewhat more varied field. In his *Problem of Sovereignty*, his reference, for evidence, is mainly to three great religious movements in Great Britain in the nineteenth century, each of them arising from the efforts of a strong religious group within the nation to assert against the state's opposition its claim to the right of self-control, free from interference by the tribunals of the state, and each conflict resulting in a victory for the religious organization—that is, in the acknowledgment by the state that such corporations are, in their respective spheres, autonomous groups within the nation. At various points in this work as well as in his later volumes and shorter essays, Laski refers more widely to frequent instances of actual state impotence against resisting groups, or even resisting individuals, within the nation, as proofs that the idea of the sovereign state is an untenable and futile doctrine. In what practical sense, he says, in effect, can the British Parliament be said to be sovereign when it dared not attempt to enforce the antistrike provision of the munitions act against the defiant Welsh miners? or if Ulster could, in 1914, refuse, with impunity, to accept the sovereignty of an act of Parliament granting home rule to Ireland? or if many individuals successfully refused to obey the military service act of 1916? Of what validity or importance

<sup>17</sup> Some of the difficulties in Duguit's discussion may be due to the varying meanings and connotations of the French term, "*droit*" and the English "law." Where he urges the existence of a "*regle de droit*" superior to the state, he apparently means something more than a moral principle; but it is not clear that he means an officially declared "rule of law," as is implied in Dicey's well known phrase. If "*regle de droit*" is translated as "rule of justice," the ambiguity of the French phrase may be indicated; and the same problem will arise whether such a standard can be something more than a moral principle without being identified with the law officially declared by the organs of the state. [Ed.]

is a doctrine which attributes sovereignty to an authority which is compelled by groups other than itself to adopt policies to which it is opposed, or which may even find it necessary to respect the consciences and prejudices of unorganized individuals?

My own first response to Laski's argument would be that, so far as I know, there has never been any political philosopher of any school in any era who would attempt to deny such facts as those adduced by Laski relating to the actual limits to state power, or who, I believe, would be much disturbed by such facts. And certainly extremely few have been the theorists or statesmen who have not acknowledged that there were moral or rational, as well as actual, physical limits to state competence. Take such typical exponents of the traditional sovereignty theory as Bodin, Grotius, and Bentham; each of them recognizes the moral limits of state authority. And Hobbes, whom Laski calls "that prince of monistic thinkers"<sup>18</sup> points out that there are certain demands upon the subject that the legal and political sovereign can not rationally make because the subject can not rationally be supposed to have surrendered the rights of self-determination in such matters. John Austin, whom also pluralists put forward as a representative *par excellence* of the monists, defines the sovereign only as the "determinate human superior" who receives "*habitual*" (not necessarily invariable) obedience from the "*bulk*" (not necessarily from every particular unit) of a given society; and he devotes several pages in his compact discussion of sovereignty to an analysis of "the limits of sovereign power."<sup>19</sup> Finally, let me quote the following two statements of Laski's views:

"In almost every independent political society, there are principles or maxims expressly adopted or tacitly accepted by the sovereign, and which the sovereign habitually observes. The cause of this observance commonly lies in the regard which is entertained for those principles or maxims by the bulk or most influential part of the community; or it may be that those principles or maxims have been adopted from a perception of

<sup>18</sup> Laski, *Problem of Sovereignty*, p. 25.

<sup>19</sup> Austin, *Lectures on Jurisprudence*, I, secs. 190, 254ff.

utility or from a belief of their conformity to the Divine will." And, speaking of any part of any government:

"Like the sovereign body of which it is a member, it is obliged or restrained morally; by opinions and sentiments current in the given community."

These two statements embodying Laski's view are not from Laski but from Austin's *Jurisprudence*.<sup>20</sup> And who but such rare publicists as Blackstone and Treitschke have sought to exalt state importance in any such degree as Laski at times conceives nonpluralists generally to do?

In attempting this brief illustration of contemporary pluralistic theory it has seemed proper to devote chief attention to Duguit and Laski, both because they are probably the best-known exponents of the doctrine and because they are the most emphatic in asserting the fundamental divergence of their doctrine from the monistic theory. But we have not put an end to the matter of political pluralism versus political monism by showing that Duguit and Laski have probably misunderstood both the meaning and the practical and moral implications of the prevailing doctrine of sovereignty, or by arguing that the evidences which they assemble to support their theoretical assaults are not relevant or effective. For, in the first place, there are other authors who, though they set forth doctrines having, in main points, the same practical tendency as the notions of Duguit and Laski, are yet perhaps clearer and more discriminating in the explanations of the relations of their doctrines to the monistic theory.

Several writers in Europe and America have set forth systems which, though they do not assail the theoretical foundation of state sovereignty, are yet pluralistic in political aspect in that they point to, or call for, a greater diversification, in the organization for the initiation and execution of state policy, than the prevailing theory is ordinarily taken to imply. For example, in France, Maurice Hauriou attempts in his constitutional treatises<sup>21</sup>

<sup>20</sup> Austin, *Lectures on Jurisprudence*, I, secs. 248 and 254.

<sup>21</sup> Hauriou, *Principles de Droit Public* (2nd ed., 1916), pp. 32ff. Cf. also Berthélemy, "Le Fondement de l'Autorité Politique," *Revue du Droit Public*, Vol. 32 (1915), pp. 662-682.

to differentiate between political sovereignty, residing in the agencies of government—including, in democracies, the electorate—and juridical sovereignty, residing in the people generally and manifested, in general, through their power of accepting or refusing to accept voluntarily or of refusing to cooperate actively in the execution of governmental commands which they consider unjust, and, in particular, through the indispensable cooperation by the people in the enforcement of criminal law, as through the jury system. In this country Miss M. P. Follet has directed attention to the increasing importance of group life; and she advocates a policy which, though leaving ultimate state sovereignty undisturbed, would accept and encourage the active political functioning of various groups, such as trade unions, professional associations, and neighborhood societies. Various sociologists, notably Durkheim, have criticized the existing political structure on the ground of its inadaptability and inadequacy as the exclusive regulative factor in the complex industrial society of today. They would create a new, more flexible organization, which, however, they would not substitute for, but rather add to, or insert into, the state; industrial control would then be divided between the state and the new organization constructed on an occupational basis, the state to remain as the supervising and ultimately sovereign authority.<sup>22</sup>

In the second place, besides these various theoretical systems, there are attacks of a practical sort, which are pluralistic in tendency in that they champion the causes of social groups within the community in conflicts between these groups and state authority, or in that they seek to distribute political control among various interests, or strive in other ways to create a more decentralized system for the application of political authority. There are various contemporary movements which, in France and England, at least, are supported by men and groups of impressive strength and vision, and whose purposes are to make substantial modifications in the existing geographi-

<sup>22</sup> See Barnes, "Durkheim's Contribution to the Reconstruction of Political Theory," *Political Science Quarterly*, June, 1920, pp. 236-254.

cally organized, hierarchically articulated political structure; modifications which would make political control more diffuse by creating more manifold bases of political representation, or which would make social control more diffuse by withdrawing altogether from state control certain fields of social action now claimed by most states to be within their competence. These movements have historical and theoretical relations that we can not consider here. We may sketch briefly certain contemporary projects for reform that illustrate the tendencies just described, and only to indicate the relations of such projects to the doctrine of state sovereignty, not to appraise their practical or moral value. For this purpose we can consider very briefly the following: the movements for (1) professional representation, or the representation of interests; (2) administrative democracy or administrative syndicalism; (3) regionalism and distributivism; (4) guild socialism; (5) syndicalism. The order in which we consider them is determined roughly by the degree to which they tend to a real division of ultimate political control, proceeding from the less to the more pluralistic. At least, the last two aim at a more radical dislocation of the existing system of control than do the first three.

*Regionalism and Distributivism.* Certain movements of reaction against the all-absorbing centralized state are in the direction of a greater localization of political and economic control; in agreement with other critics of the existing politico-economic structure, they seek a broader distribution of political and economic control; but they seek this in a territorial, rather than in a functional, division. Here we have the regionalist school in France and the distributivist school in England.

The regionalist movement in France comprises various projects for the redefinition of existing areas in order to make them logical units of social feeling and economic life, and for the devolution of many existing government functions to these reconstructed local areas. Their aim is to preserve popular self-government against the encroachments of remote, unrepresentative, overwhelming governmental authority, not by restricting the functions of government generally, but by narrowing the

territorial areas in which government normally acts. Their remedy is offered as a cure for the extravagance, confusion, irresponsibility, and generally undemocratic character of the present highly centralized system of French administration.

For a century there have been efforts to enlarge the scope of powers of the existing local agencies—particularly the departmental general council and the communal council. For over half a century schemes for a more comprehensive and radical reorganization and territorial decentralization of the administrative system have been earnestly advocated and have been supported by distinguished authors of various political schools—including Ducroq, Casimir-Perier, Jules Favre, Paul Deschanel, and Ribot. The movement has given origin to numerous organizations. The present regionalist movement may be said to have been officially launched at the Congress of Nancy in 1865. This was followed by many other conferences and organizations culminating in the formation, in 1900, of the French Regionalist Federation. This was followed in 1913 by the League of Professional Representation and Regionalist Action, under the leadership of Jean Hennessy—president of the league, leader of the movement in the Chamber of Deputies, and author of several works describing the movement. The plan of this league calls for the creation of new areas larger than the present *départements*; the governing body in each area would be composed of representatives elected by professional and economic groups within the area, and upon it would devolve the autonomous exercise of many administrative and subsidiary legislative functions now under the active control of the central government.<sup>22</sup>

The dogmas of the British distributivists, headed by Hilaire Belloc, have more of an economic color. They are two—individual ownership of property, and voluntary coöperation in small community areas rather than on broader district or national lines.

<sup>22</sup> For description and discussion of the regionalist movement, consult the following: Charles Brun, *Le Régionalisme* (1911); Jean Hennessy, *Régions de France: 1911-18* (Paris, 1916), and *Reorganization Administrative de la France* (1919); Raymond Leslie Buell, *Contemporary French Politics* (New York and London, 1920), ch. 12.



The only adequate guarantee of political and social freedom is, they hold, individual ownership; the only way to prevent a narrow concentration of economic—and therefore of political—control, is a system of small self-governing communities of individual property owners, each individual making his contribution of labor and produce to the community on the basis not of status or compulsion but of free contract. According to Belloc,<sup>24</sup> this is the system which, in the later middle ages in western Europe, was, under the influence of the Catholic Church, gradually developing in place of the pagan servile state, in which those who labored worked under compulsion of the law or of their slave status. In that medieval system the villa and the guild were the fundamental units of production and of social and political life; in each “production was regulated by self-governing corporations of small owners.”<sup>25</sup> From the tenth to the sixteenth century there was a gradual loss, by the workers of the villa, of their original servile character; and there was a gradual development of what was in effect freehold or absolute possession of the soil. In the towns the craft and trading guilds jealously safeguarded “the division of property, so that there should be found within their ranks no proletariat upon the one side, and no monopolizing capitalist upon the other.”<sup>26</sup> This ideal condition of society was, in the non-Catholic countries at any rate, supplanted by a society based on capitalism, which is an unstable system because it conflicts with “all existing or possible systems of law” and because of its intolerable effects in “denying sufficiency and security” to most men. There are only two means of escape from this unstable and intolerable system: first, “the *Collectivist State*,” which, through its efforts to establish state-guaranteed sufficiency and security, will really establish another form of the servile state; and, second, “a reaction towards a condition of well-divided property or the *Distributive State*.”<sup>27</sup>

*Professional Representation.* The idea of the representation of interests—the idea that economic, professional, or social

<sup>24</sup> Belloc, *The Servile State* (London, 1912).

<sup>25</sup> *Ibid.*, p. 52.

<sup>26</sup> *Ibid.*, p. 49.

<sup>27</sup> *Ibid.*, pp. 5-6.

groups are the logical things to be represented in government—is as old as Plato; it had, in the nineteenth century, such distinguished advocates as Burke, Hegel, and Mill, and, more recently, has been supported by certain well-known French publicists—notably, Duguit, Charles Benoist, and Maxime Leroy—and by sociologists from various countries, including Gumplowicz, Durkheim, and Ratzenhofer. The proponents of this idea argue that our present system of representation is based on the fallacious assumption that the common interests of citizens are their community interests, that economic and social needs and opinions vary primarily as we pass from region to region, and that, therefore, the just and logical plan of representation is the territorial system. They maintain that the present system is nonrepresentative and misrepresentative of the interests and views of the people. A territorial region, they hold, is never identified with a particular interest or opinion; each district is the habitation of groups of such various, conflicting economic and social needs and views that no clear mandate for the supposed representative can be fused out of them; so that what is really represented is simply one or few of the stronger among the numerous minority groups—producers, consumers, farmers, laborers, employers, employees, landlords, tenants.

The question of professional representation has been actively agitated in France during the last few decades, and numerous schemes have been devised by various organizations, some of which schemes have been embodied in bills introduced in Parliament. The plan of representation proposed by the League of Professional Representation and Regionalist Action for the governing body of the new regions proposed by it provides for the division of voters in each region into five classes—namely, agriculturists, merchants, manufacturers, liberal professions, and government employees.<sup>28</sup>

<sup>28</sup> For discussion of French theories and projects of professional representation, see the following works: Benoist, *L'Organisation de la Démocratie* (1900) and *Pour la Réforme Electorale* (1908); Leroy, *Pour Gouverner* (1918), chs. 2, 9, 14-20; Lysis (pseudonym for Eugène le Tailleur), *Vers la Démocratie Nouvelle* (1917), ch. 7; Duguit, *Manuel du Droit Constitutionnel* (1918), pp. 176-179, and *Traité de Droit Constitutionnel* (1911), I, pp. 391-392; Buell, *Contemporary French Politics*, pp. 358-372; "La Représentation des Intérêts à la Chambre," *Revue Bleue*, series 5, Vol. V (1906), pp. 703-704.

*Administrative Syndicalism.* Administrative syndicalism relates to a new location of control within the departments which administer the various governmental services. The administrative structure of present-day governments is on the whole the result of adaptations to exigencies quite other than those created by the newer types of activity assumed by modern governments during the last century or so. That structure is determined chiefly by the effort to make the action of government just or effective in performing its older, typical functions—military, diplomatic, judicial, police. Generally these governments have entirely overlooked any need to recognize the peculiar interests of the persons who actually create the services purveyed or contributed by government to the community, and have neglected to increase expertness and initiative in administration by enlarging the power and responsibility of such persons. "With the steadily expanding nationalization and municipalization of various social and economic services, governments have done little or nothing in the way of developing a new structure by which each group of public servants could exercise their proper part in the control of the respective services." We do find scattered instances of a limited participation in administrative direction accorded to civil officials. But in all such cases the powers of the boards created for such joint control are narrowly defined, being generally restricted to matters of discipline and promotion, and in all the civil servants have only a minority voice.<sup>29</sup>

In the absence of provision, within the governmental structure itself, of opportunities for self-expression and responsibility on the part of governmental employees, it is natural—especially in view of the enlarged opportunities of self-expression which employees in private industry have acquired—that during the last few decades public employees have in many instances created for themselves organs of collective expression. We can not

<sup>29</sup> For examples of such boards, cf. "State and Municipal Enterprises," special supplement to the *New Statesman*, May 8, 1915, pp. 24-25; Thureau, "Les Délégués élus du personnel des chemins de fer en France et en Allemagne," *Revue Politique et Parlementaire*, Vol. 73 (1912), pp. 454-481; *New Zealand Year-book*, 1914, p. 496; *ibid.*, 1916, pp. 17-19.

here indicate the evolution and present scope of the movement for the unionization of public servants, except to mention that the movement has made rapid progress, against persistent governmental opposition; that in Great Britain and France, for example, the national civil services are almost completely unionized and the local services extensively unionized; that considerable progress has been made in the unionization of national and local services in many other countries—including the United States; and that some headway has been made in forcing political and administrative heads to recognize and deal directly and officially with such unions.<sup>30</sup>

The movement for unionization in the public service has doubtless been primarily an economic movement, the chief objects of unionization being to secure better terms as to wages, hours, and other conditions of work. But the desire of public employees for responsibility and self-expression in their work has been a potent motive also. Moreover, administrative reformers have been glad to utilize the movement as a means of promoting their plans to increase expertness in administration by giving to civil servants definite shares in controlling or influencing the policies of their respective departments. During the latter half of the World War and since the war new projects, some of them issuing from public sources, have been devised for participation by public employees in the administration of their respective services; and some of the projects have been in

<sup>30</sup> Except for France we have only scattered and piecemeal accounts of the recent evolution of unionization in the civil service. For England, see Moses, *The Civil Service in Great Britain* (*Columbia University Studies in History, Economics and Politics*, VII, 1912), pp. 200-211; Hemmison, *The History of the British P. O.* (*Harvard Economic Studies*, VII, 1912), pp. 79-88; Report of the Royal Commission of the Civil Service; Third Report (*Parliamentary Papers*, 1913, Vol. 18), and Fourth Report (*ibid.*, 1914, Vol. 16). For France there are numerous compendious studies; see especially Lefas, *L'État et ses Fonctionnaires* (1913); Hamignie, *L'État et ses Agents; Étude sur le Syndicalisme Administratif*, (1911); Leroy, *Syndicats et Services Publics* (1909); Laurin, *Les Instituteurs et le Syndicalisme* (1908); Paul-Boncour, *Les Syndicats de Fonctionnaires* (1906). For other countries see Holcombe, *Public Ownership of Telephones on the Continent of Europe*, (1911), chs. 11, 14; Fourth Report of Royal Commission of Civil Service (*Parliamentary Papers*, 1914, Vol. 16), appendix, pp. 161ff.

temporary or tentative operation: In this country during the war the ordnance bureau of the war department established joint advisory boards, in several of the arsenals, for questions of industrial administration. In England we have the government's plan for applying the Whitley scheme of joint standing councils in the public service, the official plan of the Sankey commission for miners' participation in the administration of the coal-mining industry with national ownership of the coal royalties, and the government's bill to establish a national representative council for the English police. The application of the Whitley system to the public service in England involves the establishment in various departments of boards jointly representative of the employees and the ministerial head; but so far the government has been willing to concede only advisory powers to these boards. The civil service organizations have demanded that the boards should have full executive powers, and they have also demanded for the employees an equal, though not a majority, representation on the boards. Some projects of administrative reform in France go so far as to urge that the working officials in the public service should be endowed with real responsibility through the power of initiative and administrative direction in the work of their respective departments, and that they should be made administratively independent of governmental interference, leaving to the ministerial heads only the power of keeping the officials within the law. Such is the object of the *Ligue des gouvernés* headed by Maxime Leroy and formed in 1919.<sup>31</sup> The French government has in recent months put forth proposals for a greater recognition of, and coöperation with, the syndicates in the public service.<sup>32</sup>

*Guild Socialism.* None of the movements which we have just sketched makes any direct attack upon the ultimately indivisible, legally absolute, sovereignty of the state. They are, however, properly considered in a study of political pluralism; for, in the first place, they for the most part reflect the same kind of aversion to the centralized, hierarchically organized state

<sup>31</sup> See Buell, *Contemporary French Politics*, pp. 348-349.

<sup>32</sup> See *Revue du Droit Public*, April-May-June, 1920, pp. 314-324.

that the theorists of pluralism manifest; secondly the movements in question are commonly referred to by such theorists as illustrations of the practical working of their doctrines; finally such movements do actually tend towards a greater diversification of political and administrative control than we now have. The purposes of most guild socialists go further, look to a more fundamental division of social control, and are more nearly in full harmony with the pluralists' notion of a state brought down to the level of other social organizations.

The guild-socialist, or "national guilds," movement is chiefly a British movement, and may roughly be said to have been initiated about fifteen years ago, its doctrines receiving their earliest systematic statement in the writings of A. J. Pentty<sup>33</sup> and A. R. Orage.<sup>34</sup> The propaganda has been carried on chiefly through the *New Age*, now edited by Orage and S. G. Hobson, and the numerous books and articles by the three writers just mentioned and G. D. H. Cole, R. H. Tawney, and others.<sup>35</sup> The programs of guild socialism, although economic programs, yet require a fundamental reconstruction of political organization. Guild socialism might be called pluralistic socialism. Its aim is not to enlarge, but rather to restrict, the functions of the political state, however democratized the state may be made to be. It regards orthodox socialism and collectivism as simply newer forms of politicalism, against which in all its forms guild socialists protest because it makes the state supreme above other social groupings. The guild socialists do not regard state social-

<sup>33</sup> Pentty, *The Restoration of the Guilds System* (London, 1906).

<sup>34</sup> Orage, "Politics for Craftsmen," *Contemporary Review*, Vol. 91 (1907), pp. 782-794.

<sup>35</sup> On the evolution of the movement in Great Britain, see Cole, "The National Guilds Movement in Great Britain," in *Monthly Labor Review*, (U. S. Bureau of Labor Statistics, IX, July, 1919), pp. 24-32. For the principles of guild socialism, see the following more important books: Hobson, *Guild Principles in War and Peace* (London, 1917) and *National Guilds and the State* (London and New York, 1920); Orage (ed.), *National Guilds: an Inquiry into the Wage System and the Way Out* (London, 1914); Cole, *Self-Government in Industry* (London, 1918, and *Social Theory* (New York, 1920); Reekitt and Beckhofer, *The Meaning of National Guilds* (New York, 1918); Bertrand Russell, *Political Ideals* (New York, 1917), and *Proposed Roads to Freedom* (New York, 1919).

ism as promotive of economic freedom and democracy. For they hold that under that system the men working in any given industry have no more part in the control of their industrial life than they would if working under private ownership; because the administration of the industry, under state socialism, is still in the hands of officials whose bias and associations separate them from the actual workers. In any given state-operated industry under a collectivist system the workers are under the control of an electorate most of whom have no direct or vital interest in the questions peculiar to that industry. The guild socialist denies that the state is the community or that it may properly exercise the greater part of the community's power; and he maintains that there are many forms of common action in which the state has no proper part. The state, as a territorial association, is fit to deal with matters which affect all citizens equally and in the same way; but it is not qualified, by its structure or mode of action, to deal with matters which affect different groups of citizens in different ways. Guild socialists regard neither the territorial nor the professional grouping in society as by itself adequate. "Certain common requirements are best fulfilled by the former and certain others by the latter;" neither should be "completely and universally sovereign."<sup>36</sup>

The several groups of guild socialists are united, on the one hand, in the notion that the state must be deprived of control over production generally and, on the other hand, in the notion that the state must remain—at least until some far-off future—as an indispensable institution of society. But in their more detailed description of the sphere of the state—particularly in relation to industrial affairs—they differ in some essential points. Perhaps the prevailing opinion as to state functions is that held by the group headed by G. D. H. Cole. With this group the ideal system is a system of democratically organized associations of workers controlling industry in coöperation with a democratized state. They would have a national body, representative of all the guilds—a guild congress, holding the same relation to the citizens as producers that the national political parliament occupies in

<sup>36</sup> Cole, *Self-Government in Industry*, pp. 85-89.

relation to the citizens as consumers. The effort is to harmonize the right of the consumer to control use and consumption with the right of the producer to control production. The guild organization, in order to satisfy the producer's just demand for responsibility and self-government, must control conditions of production; the state, to satisfy the consumer's just claim for an equitable division of the national produce and for full provision of the goods and services which he justly requires, should own the means of production and regulate the price of products and the distribution of income.

In addition to these economic functions, the state should, according to this school, continue to perform its purely political duties—in defining and regulating non-economic personal relations: that is, the control of marriage and divorce, the protection and education of children, the care of dependent and defective persons, the prevention and punishment of crime.<sup>37</sup>

But Cole and his followers argue that the division of social authority is not merely between the national guild and the state. (The individual should be allowed to distribute "his loyalties and obligations among a number of functional bodies."<sup>38</sup> There are other functional associations—religious, for example—of like importance. Society should be pluralistically organized on a functional basis—should be divided into a number of co-ordinate associations, each dealing with some essential aspect of associated life.) But here the monistic evil reappears. For it is acknowledged that it is impossible to make such an exact definition of the respective functions of the various associations as to remove all opportunities for rivalry and conflict of interest and competence. There must, therefore, be a superior coördinating authority to adjudicate such conflicts. Such an authority can not be the state or any other one of the associations, but must be a joint body representative of all the essential functional associations.<sup>39</sup> This federal body is to deal only with matters common to all the associations or affecting more than one asso-

<sup>37</sup> Cole, *Social Theory*, pp. 86-87, 100-101; but compare page 137.

<sup>38</sup> *Ibid.*, p. 140.

<sup>39</sup> *Ibid.*, p. 134.



ciation; and it is to act normally, not as a legislative or administrative authority, but rather as a court of appeal—as a deciding, not an initiating, body. It must possess supreme powers of coercion, maintaining ultimate control over “the whole paraphernalia of law and police.”<sup>40</sup>

Despite this reappearance of the monist's overlord, the goal of these reformers is still a pluralistic goal. The organization just described, by securing a logical and just distribution of individual rights and obligations, would, they hold, promote a gradual reduction in the occasions for coercion, and thus a gradual disappearance of the need for any supreme coercive authority. Thus these guild socialists, although denying sovereignty to the state only to attribute it to a new social institution, yet hold up as an ideal of the future the ultimate disappearance of sovereign authority of any sort.

With other guild socialists, typified by S. G. Hobson, no dual organization of industrial control is considered necessary. Consumers' interests can be adequately represented within the guild system. The elimination of profits will remove profiteering and exploitation. What conflicts may arise within the organization of producers' crafts can be adjusted through a state, stripped of power to command (in domestic affairs), but endowed with a “spiritual leadership” which will effectively harmonize these conflicts. The state's intervention in industrial affairs should be exceptional, and determined, not by any supposed special consumers' interests, but only by considerations of general, public interest. In the interpretation of “public policy” the state is apparently to be the ultimately final authority. Whether it is to be entitled to use force, as well as “spiritual” methods, as a means of intervention in the public interest, is not clear. In fact no guild socialist has made clear, to the present writer at least, any clear discrimination between political and other functions and methods. Cole in a way recognizes this failure by providing for a joint sovereign to supply this necessary discrimination. Hobson's plan suggests, but does not fully explain, an ultimately divided social organization.

<sup>40</sup> Cole, *Social Theory*, p. 137.

The earlier efforts of the leading guild socialists were directed to the intellectual classes. Their propaganda has recently taken a more practical direction. The National Guilds League was formed in 1915, and a propaganda initiated among trade unionists. Mr. Frank H. Hodges, secretary of the Miners Federation, is a national guildsman; the mines nationalization bill, drafted recently by the federation, was built upon the principles of guild socialism, as are also recent projects prepared by the National Union of Railwaymen, the Railway Clerks Association, the National Union of Teachers, and various post office trade unions.

*Syndicalism.* Syndicalism, like guild socialism, represents a reaction from the politicalism of socialism and other systems which subordinate economic organization to political authority. Elements of the syndicalist theory have existed since the beginning of the socialist movement. In its recent and present form it is slightly earlier in origin than the recent movement of guild socialism. Syndicalism received its earliest development in France, where also it has attained its widest development.<sup>41</sup> Its philosophic exposition is found chiefly in the writings of men not closely related to the practical syndicalist efforts: notably, in the writings of Georges Sorel, Eduard Berth, and Hubert Lagardelle.<sup>42</sup>

As compared with guild socialism, syndicalism represents a substantial step further in the direction of pluralism in social authority.<sup>43</sup> The syndicalists would eliminate from society not only the capitalists, but the state also. They regard as inad-

<sup>41</sup> On the history of the syndicalist movement in France, see Levine, *The Labor Movement in France: A Study in Revolutionary Syndicalism* (New York, 1912, *Columbia University Studies*, Vol. 46, No. 3); Cole, *The World of Labour* (London, 1913), chs. 3, 4.

<sup>42</sup> Sorel, *L'Avenir Socialiste des Syndicats* (1897), *Le Décomposition du Marxisme* (2nd. ed. 1910), *Reflexions sur la Violence* (3rd ed. 1912), *Reflections on Violence*, translated by Hulme (New York, 1914); Berth, *Les Nouveaux Aspects du Socialisme* (1908); Lagardelle, *Le Socialisme Ouvrier* (1911).

<sup>43</sup> For critical exposition of the syndicalist theory, see the following: Levine, cited in note 41, chs. 5, 6; Deschanel, *L'Organisation de la Démocratie* (1910), pp. 39-115; Russell, *Proposed Roads to Freedom: Socialism, Anarchism, and Syndicalism* (New York, 1919), ch. 3, and *passim*.

quate and unjust a system in which economic control is concentrated in the hands of any authority chosen on a basis of territorial representation. They regard the state as inevitably an instrument in the hands of the possessing classes, used by them to dominate and exploit the workers. They represent guild socialism as a system designed to protect, not the working proletariat, but the bourgeoisie, from domination by the state and by property owners. The syndicalist system provides for actually and completely self-determining industrial and professional groups, each absolutely free from any organized control. It is a clear and frank application of the pluralistic hypothesis.

The most important organization in which syndicalist ideas prevail is the *Confédération Générale du Travail*. This body adopted syndicalist doctrines soon after its foundation in 1895. Various events during the past two years have revealed some difference and uncertainty of opinion, within the organization, as to whether violent or pacific methods should be used to promote the practical realization of their ideals, as to the extent to which political reforms are proper objects for their present efforts, and as to the practical utility of the strike for political ends. Their recent program of proposed legislation for the control of industry is accompanied by propaganda whose terms, in certain parts (as to joint control, for example) may be intended to obscure the real significance of their program. But the details of the program are clear, for in each of the proposed joint boards the representatives of the workers outnumber the representatives of the public; so that the syndicalist ideal of economic federalism and workers' control would be realized by the adoption of the program.<sup>44</sup> Counterparts of the French general federation of labor are found in weaker organizations in England, America, and other countries; in England, for example, in the Industrial Syndicalist League, founded in 1920 under the leadership of Tom Mann; in the United States, chiefly in the Industrial Workers of the World, which, founded in Chicago in 1905, inherited aims of the Knights of Labor (organized in 1869) and

<sup>44</sup> See Allix, "Syndicalisme et Nationalisation," *Revue Politique et Parlementaire*, July, 1920, pp. 117-129.

merged several earlier organizations founded on an industrial (as distinguished from a craft) basis.<sup>45</sup> The organizations outside of France have generally developed neither numerically strong membership nor notably able leadership.<sup>46</sup> ✓

It is not within the scope of this article to discuss the extent to which any of the various projects sketched here are worthy of consideration as schemes to be put into operation in our political system; although it would obviously be worth while for political scientists to consider the movements in that aspect. Our interest here has been primarily in their relation to pluralistic theories of state sovereignty, with respect to which the following brief suggestions may be offered by way of summary.

<sup>45</sup> Among the numerous accounts of the history and policies of the "I. W. W." the following may be cited as among the more useful accounts: Paul F. Brissenden, *The Launching of the Industrial Workers of the World* (Berkeley, 1913, *University of California Publications in Economics*, IV, No. 1); Louis Levine, "Development of Syndicalism in the United States," *Political Science Quarterly*, Vol. 28, (1913), 451-479; John Graham Brooks, *American Syndicalism: the I. W. W.* (New York, 1913); Vincent St. John, *The I. W. W.: Its History, Structure, and Methods* (Cleveland, 1913, and Chicago, 1917, I. W. W. Publishing Bureau); Carleton H. Parker, "The I. W. W.," *Atlantic Monthly*, Vol. 120 (1917), 651-662.

<sup>46</sup> *Joint Control in Private Industry.* Another practical movement which is in part decentralizing in tendency and which involves a recognition of group interests, is the movement for joint control (or workers' participation in control) in private industry. The movement may be regarded as a practical application of principles similar to those of the sociologists referred to above. There are a great many illustrations in the field both of practice and of proposals, and there are many familiar recent examples of a recognition by the state of the need for dealing with industrial problems through agencies representative of the organized groups immediately concerned. The working of some systems of compulsory arbitration is largely dependent (as in New Zealand and New South Wales) upon action of workers and employers in their respective organizations. And in England, the Whitley system of joint standing industrial councils in each industry to settle by periodic negotiation a wide range of questions in that industry, affords another example. The experiences of a number of these Whitley councils during the last two years proves them competent to deal intelligently with a variety of industrial questions and to reach conclusions acceptable to both sides and practically applicable. Similar schemes have been instituted in other European countries, and the tentative and partial steps in the same line in this country are familiar. There is a copious current literature on this general movement. See especially Sidney and Beatrice Webb, *A Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), and Arthur Gleason, "The New Constitutionalism in British Industry," *Survey*, Vol. 41 (1919), pp. 594-598.

A fundamentally pluralistic theory of state sovereignty seems neither necessary nor appropriate for any of the proposals referred to, except those of syndicalism and its closely kindred doctrines. The syndicalist programs can rest upon the syndicalist philosophy of Sorel and Lagardelle; other projects, upon the historical and analytical expositions of Gierke, Maitland, Figgis, Hauriou, Follet, and sociologists such as Durkheim; the views of none of these latter require any abandonment of the essential features of the conventional theory of state sovereignty. All that the monistic doctrine of sovereignty implies is: first, that normally within any given independent community there is and can well be only one system of institutions for the enactment and enforcement of civil laws—that is, commands which can be executed through the instrumentality of force, in the form of coercion directed against the body or property or individuals, physical restraint of the individual's goods or person, or the taking of the life of the individual; second, that the usual and appropriate name for the organization comprehending these institutions is the state; third, that within such organization there is a legal sovereign—that is, an organ, or group of legally coöperating organs, possessing ultimate legal control over other organs of the state, and, through these, over individuals and the non-political groups of the community, and not itself subject to legal control; fourth, that the state has practical and moral utility as an agency of unification and coördination among the manifold coöperative groups in society—in exercising its peculiar function of adjusting the relations of such groups to one another.

No paramount moral importance is claimed for this organization; no claim is made that the state, in its choice of activities to be brought under the sway of civil law, can ignore social opinion or individual conscience; or that the state should be considered competent "to range over the whole area of human life," or to absorb "the whole loyalty of an individual;"<sup>47</sup> or that the state is under no moral obligation to regard the purposes of other essential associations. In some cases it may be morally right for an individual to obey commands which his conscience dis-

<sup>47</sup> Laski, *Authority in the Modern State*, pp. 45, 83.

approves; in other cases it may not be, whatever the author of the command—state, church, or trade union. Most monists perhaps believe that in states which endure and follow the general progress of civilization, the occasions for conflict between political and individual conscience tend to become relatively fewer, that such states are constantly readjusting their policies in order to remove discord between law and conscience, that the prevailing trend of political development is possibly in the general direction of a greater humanization of state policy. Such are about the only moral claims that an ordinary monist makes for the state. His political ethics on its positive, constructive, side should probably go further and demand that, where conflicts arise between the command of the state and that of other groups, the citizen should not consider himself to have fulfilled his duty by deciding which command it is right to obey in that instance; but that he should use his effort to change the policy manifested in the wrong command of the one so as to make it accord with the right policy of the other.

(We should recognize the practical utility of consistent legal and political theory. So it seems a matter of practical importance that the fundamental constitutional implications of none of the interesting projects we have named should be misrepresented by loose or inexact theory.) A movement to reinvigorate local institutions by enlarging their functions and increasing their administrative autonomy; proposals that recognize that government, because it is no longer a mere protection-affording, evil-suppressing authority, but also a giant serving, producing and purveying corporation, supplying various economic, cultural and social needs, must, therefore, in its nonpolice activities, divest itself somewhat of its iron disciplinarianism and wooden officialism; the notion that greater recognition must be given to interest groups both within and without government, and that a new organization of representation may be necessary in order to represent a larger number of legitimate interests; the view that the state, in reorganizing industrial control so as to create greater justice in distribution and broader opportunities of self-expression, should promote systems of joint control under state

auspices, rather than establish direct, centralized governmental control of industry: with respect to such views and proposals, any theory which gives basis to a notion that their adoption would mean any great disturbance of our idea that in any independent society there is a single organization of final legal control, or any theory which may give rise to a fear that the proposals are anarchistic in logical or practical tendency, does, in that respect, in theory, and therefore in practice, a disservice to the proposals.

Although this is the conclusion which the writer has to offer on the question of the relations of the pluralistic doctrines of Laski and Duguit to the practical movements which they claim as applications of their doctrines, yet it would be improper for him to close with such a presumptuous criticism of the two important authors in question. They have rendered a valuable service in fostering interest in the writings of other authors, such as those we have named above, and in the practical movements which appear to have a clearer theoretical basis in the works of those other authors. In general, the brilliant and interesting writings of Duguit and Laski have undoubtedly been of value in inducing us to think less about questions of sovereignty and more about questions of representation and government.

## THE CONSTITUTIONAL CONVENTION OF MASSACHUSETTS

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The constitutional convention of Massachusetts which assembled in the city of Boston, June 6, 1917, and finally terminated its labors at a short session of two days in August, 1919, is the fourth body of this kind which the Old Bay State has had. The first convention was held in 1779 and 1780 in Cambridge and Boston, and formulated the constitution of 1780. This instrument, to which sixty-six amendments have been added, is the oldest written constitution now in force anywhere in the world. The second convention was held in 1820, and submitted a series of resolutions part of which were adopted and part rejected by the people. A third convention met in 1853 all of whose proposals were rejected. After an interval of sixty-four years, a fourth convention was called, which met in 1917 and again in 1918 and yet again in 1919. It submitted to the people twenty-two amendments and a revised draft of the constitution, all of which were accepted.

The convention was composed of 320 delegates. Of these 16 were elected at large, 4 were elected by each congressional district, and the remaining 240 were elected from the districts created for the purpose of choosing members of the state house of representatives. They were elected without party designations, but before the election took place, the lines between the friends and the opponents of the initiative and referendum were rather sharply drawn, and this served practically all the purposes

<sup>1</sup> The writer has incorporated in this paper portions of an address on "The Workings of the Massachusetts Constitutional Convention," delivered at the meeting of the American Library Association at Saratoga, N. Y., July, 1918, and printed in the Association's *Bulletin* for September, 1918.



of party organization and designation. In fact, this question dominated the whole of the first session of the convention and overshadowed other questions which were probably of greater importance.

Three months before the convention assembled, the governor appointed a "Commission to compile Information and Data for the Use of the Constitutional Convention," to which were assigned offices in the state house, which were kept open throughout the first two sessions of the convention and where at least one member of the commission could always be found. In considering how it could be of most use to the convention, the commission reasoned that as the convention was made up of busy men who had neither the time nor in many cases the necessary training for undertaking extensive research, it would be most helpful to issue a series of bulletins, each dealing with a topic which was likely to come before the convention. To this end a circular letter was sent to all the men, about nine hundred in number, who had taken out nomination papers for election to the convention, asking them on what topics they would suggest that information be compiled. About one hundred different topics were mentioned, and on thirty-six of these, bulletins were prepared, of which an edition of five hundred copies was printed and a copy sent to each delegate as soon as issued. In order to achieve the largest usefulness, all of these bulletins should have been in the hands of the delegates before the convention assembled. The commission was appointed too late to make this possible, and the best that it could do was to see that each bulletin was ready before the subject with which it dealt was reported upon by a committee of the convention.

In preparing its bulletins the commission sought to give them three characteristics. They must be concise, else they would not be read; they must be authoritative, so that the delegates could accept their statements of fact as established and safely base conclusions upon them; they must be impartial and free from attempts at propaganda. When this series of bulletins began to appear, few of the delegates paid much attention to them, but this attitude gradually changed, and upon at least

one occasion the convention postponed its debate upon a certain topic until it had received the commission's bulletin which was then nearing completion.

The commission not only compiled information for the convention, but it was made an integral part of the convention's machinery. Its members frequently appeared before committees, it assisted the delegates in the drafting of amendments, and its vice-chairman was made an officer of the convention and served throughout as technical adviser to committees. The most important function of this office was to assist the committee on form and phraseology in the final revision of proposed amendments before they were sent to the people.<sup>2</sup>

The convention was called to order by Governor McCall. This was peculiarly fitting, for he more than any other man is entitled to the credit for the enactment of the legislation which resulted in the holding of the convention. The delegates chose for their president Hon. John L. Bates, former governor of Massachusetts, and much of the success of the convention was due to his great ability as a presiding officer, to his fairness, and to the skill with which he helped the convention over many hard places.

The first session of the convention, which occupied the summer of 1917, was dominated by the question which had been uppermost in the public mind since the holding of a convention was first proposed, namely, whether Massachusetts should adopt some form of initiative and referendum. A measure covering the subject was introduced and held the center of the stage throughout the session of 1917, but was put aside from time to time to permit the consideration of other questions which it was deemed necessary to submit to the people at the November election. Three such measures were agreed upon by the convention and adopted by the people in November, 1917. Each of the fourteen counties returned a majority in favor of each amendment.

<sup>2</sup> The members of the commission were William B. Munro, chairman, Lawrence B. Evans, vice-chairman, and Roger Sherman Hoar.

The first of these empowers the legislature to provide for voting by voters who are absent from home on election day. Absent voting is not unknown in America, but it has usually been thought of as a war measure enacted in order to prevent the disfranchisement of soldiers and sailors. Aside from this class, however, it has been estimated that more than 20,000 voters in Massachusetts—locomotive engineers, brakemen, traveling salesmen, chauffeurs, fishermen and students—lose their votes every year through absence. These men, rather than the soldiers and sailors, were uppermost in the mind of the convention when it passed this amendment with practically no opposition. It was ratified by the people by a vote of 231,905 to 76,709.

Another amendment authorizes the legislature to make provision for public trading in the necessities of life and for shelter in time of public exigency. Massachusetts has been visited several times in recent years by such calamities as the great fires at Chelsea and Salem; and the rule laid down in *Lowell v. Boston*, 111 Mass. 454, (1873), seemed to make it impossible for the state to extend adequate relief. These events, but especially the conditions of living which bore with particular hardship upon the poor, were responsible for a strong sentiment in favor of enlarging the power of the legislature in this direction. This amendment also received popular ratification by a vote of 261,119 to 51,826.

The third amendment adopted by the people was the "anti-aid amendment," which prohibits any appropriations of public money to institutions not under public control. From 1860 to the end of 1916 Massachusetts had appropriated nearly \$19,000,000 for institutions of this kind. In recent years the attempts of various churches to obtain public funds for their schools and hospitals threatened to divide the people of the state into hostile groups and create an atmosphere of suspicion and antagonism. Several times amendments have been introduced in the legislature forbidding appropriations for institutions under the control of any church; but the convention went further, and by a vote of 275 to 25 adopted as drastic a provision as

possible. Except as provided in existing contracts, there is henceforth to be no appropriation of public money for any private institution. In the weeks preceding the election this amendment was sharply debated. The Catholic hierarchy, led by Cardinal O'Connell, strongly opposed its adoption, on the ground that it was an attack on the Catholic Church, and was unjust to that body in that it shut off the possibility of aid to the parochial schools. One of the most gratifying features of the vote on the amendment both in the convention and at the polls is the fact that it did not divide on religious lines. There were about one hundred Catholic delegates in the convention, only nine of whom voted against the amendment, while at the polls both priests and laity showed marked independence. The amendment was ratified by a vote of 206,329 to 130,357. By this action it is hoped that a most troublesome question has been permanently removed from political discussion.

For the purpose of comparison it may be well to state that the total vote for all candidates for governor at the election in 1917 was 387,927, while the total vote for and against each of the amendments was respectively 308,614, 312,945 and 336,686.

When these three amendments had been submitted to the people, the convention resumed its discussion of the initiative and referendum, and finally adopted a measure which provides for the initiation by the people of both constitutional amendments and of laws and also for a compulsory referendum on enactments of the legislature. The measure is too long for detailed description, but its distinguishing feature as compared with similar measures in other states may be said to be its exemptions. Neither the judiciary, nor judicial decisions, nor the anti-aid amendment, nor any of the great safeguards of liberty set forth in the bill of rights may be made the subject of an initiative petition. Having adopted this amendment by a vote of 163 to 125, and having provided that it should be submitted to the people at the state election of November, 1918, the convention adjourned until June, 1918.

When the convention reassembled, it should have felt stimulated by the endorsement implied in the overwhelming majorities

by which the three amendments submitted had been ratified. The result however was otherwise. Although some of the questions discussed at the second session were not inferior in importance to those of the first session, it was noticeable that the interest of many of the delegates had materially flagged, and a considerable number paid little attention to the proceedings. Eighteen amendments were, however, approved by the convention, and at the election in November, 1918, they, as well as the amendment establishing the initiative and referendum—adopted too late for action in 1917—were ratified by the people.

Among the amendments which were adopted at the second session were several which, while not of great intrinsic importance, were desirable modifications of the existing constitution. Among these were two amendments relating to the militia. It has already been indicated that the constitution of Massachusetts antedates the Federal Constitution, and some of its provisions were better suited to the relation which existed between the central government and the states under the Articles of Confederation than to the relation which now exists. This was most conspicuous in those clauses relating to the militia, and the amendments adopted do little more than bring them into harmony with the provisions of the Federal Constitution.

Another of the minor amendments provided for the order of succession in case the offices of governor and lieutenant governor should become vacant at the same time. The former provision that in such a contingency the office of governor should devolve upon the executive council was cumbersome and unworkable. The amendment provides that when both offices are vacant the secretary, attorney-general, treasurer and auditor shall succeed in the order named.

Massachusetts is one of the few states which retains a judiciary appointed to serve during good behavior. In the convention the system was attacked, partly because it was alleged that there was no convenient means of getting rid of unfit judges, partly because it was said to be out of harmony with the present tendency, represented by the support of such devices as the initiative and referendum, toward direct government by the people.

Many proposals for the modification or entire abolition of a judiciary appointed for life were made, but all were defeated by substantial majorities. The convention was not convinced that any of the radical changes proposed would be for the better. The only amendment relating to the judiciary which the convention submitted to the people provides that any judge who has become physically incapacitated may, after notice and hearing, be removed by the governor and council. The ancient remedies of impeachment and removal by address, both of which have been employed in Massachusetts, are still retained.

The practice on the part of the legislature of appointing committees to sit during the recess, each member of which was usually paid one thousand dollars for his services thereon, had grown to such proportions that it had aroused widespread criticism. The legislature of 1918 provided for eight recess committees having in all fifty-one members. There was a general feeling that many of these committees were entirely unnecessary and that their appointment was the result of political jobbery. The convention therefore adopted an amendment providing that no member of the legislature should be appointed to any office created during his term and that no member should receive additional compensation for service upon any recess committee "except a committee appointed to examine a general revision of the statutes of the commonwealth when submitted to the General Court for adoption." This amendment seemed to put an end to an abuse which had come to be regarded as a scandal, but the convention did not correctly estimate the lengths to which the greed of the members of the legislature would carry them. After this amendment had become part of the constitution, the legislature created a recess committee on the revision of the statutes, which committee consists of sixty-one members—more than one-fifth of the total membership of both houses—each of whom was to receive one thousand dollars and mileage. "All of which," says a clever newspaper man, "shows that one melon is as good as a half dozen if the one is large enough to go around." The legislature also clearly violated the spirit of that part of the amendment which prohibited the appointment

of members to offices created during their term. It passed a bill for the increase of their own salaries and made the measure retroactive so that the men who voted for it would benefit by it. This measure became a law over the governor's veto.

Another amendment provides that within the first sixty days of a legislative session the legislature may take recesses amounting to not more than thirty days. This provision, unusual in our state constitutions, is the outgrowth of the legislative practice of Massachusetts which requires committees to report upon every bill which is referred to them. There is no "pigeon-holing" of bills. At the beginning of a session, therefore, much of the time of committees must be given to hearings, and it is for the purpose of allowing these to proceed without interruption that provision was made for extended recesses of the legislature.

Another innovation in legislative practice is provided for by an amendment which permits the governor to return a bill to the legislature with a suggestion of changes in it which will make it acceptable to him. If the legislature makes the changes, the bill is submitted to the governor in its revised form. If not, it is returned to him in its original form, and he then determines whether or not he will sign it. This plan has been found to work well.

Three of the amendments adopted in 1918 are such innovations that they may become landmarks in American constitutional history. The first authorizes the regulation of advertising in places within public view. Whether or not the control of billboards falls within the police power has long been a vexed question in law. In Brazil high taxation affords sufficient protection against unsightly advertising. In England, France, Germany, Italy and several other countries, regulation is frankly based on esthetic considerations, but in the United States the decisions of the courts indicated that legislation for the regulation of billboards must be based upon such well-recognized heads of the police power as the protection of the public health, morals or safety, and it was only when it was incidental to these objects legislation having esthetic considerations in view could be sustained. So far as it is possible for a state to authorize

regulation from esthetic considerations alone, Massachusetts has done so. Whether the new amendment is offensive to the due-process clause of the Federal Constitution yet remains to be determined.

Allied in some respects with the amendment for the regulation of advertising in public places is the amendment authorizing the legislature "to limit buildings according to their use or construction to specified districts of cities and towns,"—in other words, to establish building zones. The reasons for this amendment are obvious. One has only to observe the condition of any city in the United States to perceive the need for placing some restriction on the freedom of land owners as to the character of the buildings which they may erect or the uses to which buildings may be put.

One of the most significant amendments adopted by Massachusetts is that which authorizes the establishment of compulsory voting. We have long been accustomed to provisions for compelling the performance of other kinds of civic duty. Men's property may be taken for public purposes without their consent. They may be required to perform jury duty. They may even be compelled to risk life and limb in military service. Why, then, it was argued, may not a voter be compelled to give the public the benefit of his judgment on men and measures at the polls? The amendment which has been adopted, and which is the second only of its kind to be incorporated in any constitution in this country, is permissive in its terms and the power conferred has not yet been exercised.

Massachusetts has clung tenaciously to annual elections. John Adams' famous dictum, "where annual elections end, there slavery begins," has met with almost literal acceptance. In curious contrast to the rule in the judiciary department, where members were appointed to serve during good behavior, the members of the executive and legislative departments were chosen for terms so short that they began their campaigns for reelection almost as soon as they took office. This was not only a serious interruption of public business, but as the holding of a general election in Massachusetts involves the expenditure by the com-



monwealth and candidates and political committees of more than a million dollars, it was argued that the advantages of annual elections were not sufficient to justify their cost. When the amendment providing for biennial elections was introduced at the first session of the convention, the sentiment of the delegates was undoubtedly opposed to it, but the longer the subject was considered and the more the experience of other states was studied, the less reason there seemed to be for adhering to a system which no other state was willing to adopt. While providing for biennial elections, the amendment expressly requires annual sessions of the legislature.

Two amendments deal with the finances of the state. One provides for the establishment of a budget system, the central features of which are the preparation of the budget by the governor and the vesting in the governor of the veto power over items in appropriation bills. The other amendment deals with the borrowing power of the state, and provides that its credit shall never be loaned or given to any individual or to any association or corporation under private management. The amendment also provides safeguards for the contracting and discharge of public debts.

Another amendment which indicates strongly the present trend of thought is one which deals with the development of natural resources. Its language merits setting forth in full:

"The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the commonwealth are public uses, and the general court shall have power to provide for the taking, upon payment of just compensation therefor, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control thereof and to enact legislation necessary or expedient therefor."

This amendment is so phrased as to keep the development of natural resources to the fore, and perhaps obscure the real extent of the authority which it confers to embark on collective enterprises. A careful study of its language is likely to lead one to

agree with the judgment of the president of the convention that "its adoption by the people is pregnant with great possibilities and may result in its recognition hereafter as by far the most important amendment submitted by this convention to the people."

One of the questions which was extensively discussed by the convention was that of the reorganization of the executive departments. Besides the governor, lieutenant governor, council and the four elective officers provided for by the constitution, there had gradually grown up more than a hundred executive or administrative officers, boards and commissions, whose duties sometimes overlapped and who were subject to practically no central control. Many delegates thought that the whole executive department should be centered in the governor, who should be given almost a free hand in it and who should be held responsible for the results. This, however, was too radical a departure from previous practice, and all proposals having this object in view were rejected. It is not altogether creditable to the convention that its refusal to enlarge the executive authority of the governor was influenced very considerably by the adverse opinion which was held of certain recent governors and gubernatorial candidates. These proposals were defeated by arguments *ad hominem* rather than by opposition to the principle which they involved. All that the advocates of executive centralization and responsibility were able to obtain was an amendment which required the legislature to make provision for the organization in not more than twenty departments of all the executive and administrative work of the commonwealth. This has been done, but it is as yet too early to judge of results.

Three other amendments of lesser importance remain to be noticed. One requires that all charters, franchises and articles of incorporation shall always be subject to alteration and annulment. The legislature already had power to effect this result, but it is now mandatory. Another amendment makes women eligible to appointment to the office of notary public. A third amendment authorizes the taking and preservation of places of historical interest.

As already stated, the Massachusetts constitution of 1780 is the oldest written constitution now in force anywhere in the world. To keep it abreast with the needs of the state and with changing sentiment, sixty-six amendments have been adopted. As a result, it is often difficult to determine with precision what the requirements of the constitution are as to any given point. Hence, before adjournment on August 21, 1918, the convention provided for the appointment of a committee to prepare a revised draft of the constitution, striking out all obsolete matter, and inserting in the proper place each provision that was still in force. The chairman of the subcommittee which had active charge of this work was Hon. James M. Morton, retired justice of the supreme judicial court, whose wide experience and great learning and beneficent presence contributed so much to the work of the convention. Judge Morton prepared a revision (the Morton draft), the writer also prepared one (the Evans draft), and upon these two the committee formed a third draft, which was accepted by the convention at a short session in August, 1919, and was ratified by the people at the November election by a majority of more than 200,000. Unfortunately, in an effort to make sure that the revision had not altered the original sense of any provision of the constitution, some one obtained the insertion of the following ill-considered section:

"Art. 156. Upon the ratification and adoption by the people of this rearrangement of the existing constitution and the amendments thereto, the constitution shall be deemed and taken to be so rearranged and shall appear in such rearranged form in all future publications thereof. Such rearrangement shall not be deemed or taken to change the meaning or effect of any part of the constitution or its amendments as theretofore existing or operative."

When the supreme judicial court was asked to determine whether the new draft was now the constitution of the state or whether the old instrument with its sixty-six amendments was still in force, the court held that the paragraph above quoted indicated that the new draft was not intended to supplant the old constitution, which therefore still remained the fundamental

law. At the ensuing session of the legislature Senator Loring, who had been chairman of the committee on form and phraseology of the convention, endeavored to persuade that body to submit the new draft, with the obnoxious article omitted, as a constitutional amendment, but the motion was rejected almost unanimously.

In order to form a just estimate of the work of the constitutional convention it is necessary to look not only at the measures which it adopted but also at those which it refused to adopt. It is impossible of course to enumerate all the constitutional provisions which it might have submitted to the people for their approval. These cover the whole range of government. Neither would it be profitable to consider the proposals, several hundred in number, which were unfavorably reported by committees and were never considered by the convention. But of the proposals for amendment which were before the convention and were extensively debated and finally rejected, three are of special importance, and as to these three, students of politics and government are practically unanimous in disagreeing with the judgment of the convention.

The first of these proposals authorized the legislature to classify property for purposes of taxation. The constitution of Massachusetts restricts the taxing power of the legislature, except as to taxes on incomes, to the levying of "proportional and reasonable" taxes. The supreme court has held repeatedly that the word "proportional" prevents the taxing of different kinds of property at different rates. All property must be taxed alike in proportion to its value. This rule may have been just and expedient in 1780, when the forms of property were less numerous and the economic organization of society less complex than at present, but it is contrary to the opinion which now prevails as to the proper basis of a sound system of taxation. Massachusetts particularly requires the elasticity which the levying of taxes by classes permits, for there is no part of the country where property has been accumulated in forms more easily evasive of the tax gatherer or where economic interests are more intricate. Yet the convention refused to alter the ancient rule.

If the gossip of the corridors can be relied upon, certain real estate interests in Boston were chiefly responsible for the defeat of the amendment.

On the subject of social insurance the convention again failed to act in accordance with prevailing opinion. Whatever one may think of the merits of old age pensions, health insurance, accident insurance and other forms of social amelioration, particularly as applied to the needs of his own community, there is general agreement that every state legislature ought to be vested with the power to enact legislation of this kind. Whether the power ought to be exercised is another question. Several amendments were drafted for the committee on social welfare, all of which were reported to the convention. Among these the convention chose for discussion the most comprehensive one, one which authorized the legislature to enact practically any form of social insurance which met with its approval. As this proposal was supported by those members of the committee who were regarded as ultra conservative, an easy victory in the convention was predicted. But it was defeated, and strange to say, largely through the opposition of the labor delegates. It has been suggested that the amendment was unnecessary, in as much as the residuary power of the legislature is probably broad enough to cover legislation of this kind. This opinion is probably correct, but in the case of a matter of such extreme importance all doubt should be removed. Should Massachusetts adopt a system of old age pensions, for instance, the constitutionality of the legislation would undoubtedly be disputed, and the matter would be judicially tested. It is unfair to the courts to place upon them the burden of deciding, on purely legal considerations, a question which the people ought to decide for themselves. Much of the criticism of the courts for decisions in cases involving the validity of social legislation would be avoided if the people would remove from their constitutions the ambiguities which make judicial action necessary.

The third amendment which the convention rejected, but which all students of government will agree should have been adopted, made definite provision for the calling of a constitutional

convention. The constitution of 1780 provided that in 1795 the question should be submitted to the people as to whether a convention should be held. If they should decide in the negative, as they did, no further provision was made for resubmitting the question or for calling a convention in any other way. The convention of 1820 provided a method for amending the constitution through proposals initiated by the legislature, and it has been argued by some that the specific enumeration of this method excludes all others. A like situation exists in Rhode Island, and its supreme court has ruled in an advisory opinion that a constitutional convention cannot be held in that state. The supreme judicial court of Massachusetts has said, in an advisory opinion written by Chief Justice Shaw, that amendment on the initiative of the legislature is the only method of amendment authorized by the constitution of Massachusetts. Just what the court meant by this cryptic utterance is uncertain. If it meant that amendment through legislative action is the only method mentioned in the constitution, it stated an obvious fact. But if it meant that the mention of this method of amendment was sufficient in itself to remove from the residuary power of the legislature the authority to provide for a constitutional convention, many would dissent. Those who would apply in this situation the maxim *expressio unius exclusio alterius* fail to take into account the high nature of the residuary power of the legislature. It represents the whole political authority of the people. Subject only to the limitations of the federal and state constitutions, the power of the legislature embraces the whole range of political action. It is not to be presumed that it has been cut down unless the intention of the people is unmistakable. When the people of Massachusetts gave the legislature the power to initiate amendments, it did not take from it the power to adopt any other method of constitutional revision which it had previously had the power to adopt. Both reason and constitutional practice in Massachusetts clearly establish the power of the legislature to submit to the people the question of calling a convention. But the discussion of the subject establishes with equal clearness the wisdom of removing all doubt. Yet a resolu-

tion giving the legislature power to submit to a popular vote the question of calling a convention was rejected. The explanation is not clear. The resolution was acted upon late in the second session. The delegates were tired and it was difficult to attract their attention. The debate, particularly on the part of the opposition, was weak. The resolution was defeated perhaps as much by inertia as anything else, assisted by a feeling that the convention had already done enough.

Not the least interesting feature of the constitutional convention and its work is the action of the people upon the amendments submitted. At the election of 1917, three amendments were submitted, and the action of the people on them showed the popular referendum in its very best light. All of these amendments were adopted by substantial majorities. Furthermore each of them received a majority of votes in each county in the state, and in no instance was the number of blank ballots as large as the number of ballots in favor of the amendment. Still more impressive was the fact that the total vote for and against each of these amendments was about 85 per cent of the total vote cast for the various candidates for governor.

The action of the people upon the nineteen amendments submitted at the election of 1918 was in sharp contrast with their action in 1917. To be sure, all the amendments were adopted, but there was no such general approval of the action of the convention as had prevailed in the preceding year. In 1917 every amendment received a majority in every county, while in 1918 no amendment received a majority in every county. In fact three counties, Bristol, Nantucket and Franklin, gave majorities against every amendment. The amendment providing for the initiative and referendum was approved by only two (Suffolk and Plymouth) out of fourteen counties. In 1917 the vote on the anti-aid amendment was the largest vote cast on any of the amendments, and was 86.5 per cent of the total vote cast for governor. In 1918 the vote on the initiative and referendum was the highest vote cast on any of the amendments, but was only 78.4 per cent of the total vote for governor. The comparison may be stated in still another way. While the total

vote for governor in 1918 exceeded that of 1917 by 34,443, the highest vote on any amendment in 1918 was 3937 less than in 1917.

Again, in 1917, the number of votes for each amendment was greater than the number of blank ballots, while in 1918 that was true of only four out of nineteen amendments. It is perhaps not without significance that these four were the first four on the ballot. Having expressed an opinion on four amendments the interest of many voters waned or their energy was exhausted, and on the remaining fifteen amendments they indicated no preference. This phenomenon cannot be explained on the ground that the first four amendments were more important than any of the others, for their order upon the ballot was determined by the order in which they passed the convention. Neither were they more likely to arouse general interest. Amendment number four, for instance, provided that property of historical or antiquarian interest might be taken by the state. On that proposal the number of blank ballots was only 164,249; while on the amendment providing for biennial elections the number of blank ballots was 177,991. On the amendment providing that all charters and franchises should be subject to revocation the blanks numbered 187,827, and on the amendment establishing a budget system the blanks numbered 192,407.

There was one undesirable practice on the part of some of the delegates to the convention which should be mentioned in order that future conventions both in Massachusetts and elsewhere may prevent it. That is the abuse by delegates of the privilege of revising the stenographic report of the speeches which they addressed to the convention. When the question of printing the debates was under discussion in the convention, it was pointed out that these debates would not only have value in the future as discussions of the subjects with which they dealt, but also that they would throw light upon the meaning of doubtful clauses in the constitution, and hence would be consulted not only by students of public affairs but by legislators and by the courts. It is obvious however that the printed debates lose their value as a guide to the meaning of the constitution if they



are not a true record of what was said in the convention. We are all familiar with the scandalous length to which Congress has gone in granting leave to print and the privilege of extending remarks. It is believed that the constitutional convention never granted to any delegate formal leave to print, but the same result was attained through the privilege accorded to each delegate of revising the stenographer's report of his speech. In at least one instance, one of the most prominent members of the convention revised his speech by substituting for it an entirely new one. The speech in the printed report was never delivered to the convention, and as the debates were not printed until after the adjournment of the convention, there was no opportunity for the delegates to detect this falsification of the record. Obviously such a speech is of no value as a guide to the meaning of the provision under discussion, for since it was never delivered, its assertions could not be corrected nor its arguments refuted.

The constitutional convention of Massachusetts furnishes strong evidence of the change which has come over the view taken by the people of the functions of government. Whether their conclusion be a wise one or not, it is unquestionably true that the people of our day have rejected Jefferson's maxim that that government is best which governs least. Public opinion requires that the field of governmental activity shall be enlarged, and that our political machinery, whose function a century ago seemed to be chiefly a protective and defensive one, shall now become the active agent for the conduct of enterprises which were formerly under private control. The wider the range of government becomes, the more necessary it is that its agents shall have large freedom of action. The carefully devised series of checks and balances to which John Adams paid eloquent tribute may easily result in deadlock. In accordance with the prevailing opinion of the time, most of the amendments submitted to the people of Massachusetts in 1917 and 1918 enlarged the sphere of the government and removed existing restrictions, while only a few of them imposed new restrictions. In this respect the convention of 1917-18 is in marked contrast with the earlier conventions in Massachusetts. The convention of

1820 submitted fourteen amendments to the people, only one of which involved any increase in the power of the legislature, while the convention of 1853 recommended no increase at all in the power of the legislature. Abuse of official authority is no longer the bugbear which it was to our grandfathers, or at any rate the people of our day are willing to incur the risk of such abuse in order to leave to their government freedom to act.

While the Massachusetts convention showed the prevailing opinion as to enlarging the sphere of government and removing restrictions on the action of governmental agents, it was essentially a conservative body. None of its recommendations was radical. It adopted the popular initiative and referendum, but surrounded it with many safeguards. It refused to make any substantial change in the judiciary. The substitution of biennial for annual elections was essentially a conservative measure. In fact, it may be said of all of the twenty-two amendments which it submitted to the people that they made only such changes as are to be expected in any enlightened and progressive community which endeavors to adapt itself to the demands of new conditions and to keep in touch with the expanding range of men's thoughts.

## MILITARY POWER AND CONSTITUTIONAL DEVELOPMENT IN CHINA

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It is now nine years since the outbreak of the Chinese revolution. It is fifteen years since the Manchus attempted to maintain their control by introducing representative institutions into China. The development toward constitutional and representative government under the Manchus was checked in 1911 by the revolutionary movement. When the Chinese Republic was established as the successor to the alien Manchu Empire it was felt that the problem of modernizing China bade fair to be solved, and that in an orderly way her political institutions would be brought into harmony with western standards. Unfortunately that orderly progress has not come. Parliamentary government under the Nanking (provisional) Constitution was replaced by the dictatorship of Yuan Shih-kai under the arrangements of the so-called constitutional compact, which in turn was followed by the attempt to reestablish the monarchy. The failure of the monarchy movement brought back parliamentary government, but before a permanent constitution could be adopted Parliament was again dissolved, and a government controlled by a military clique set up in its place. Since this military government was unacceptable to the southern provinces, the country became divided. So far it has not been possible for the country to reconcile its differences. Instead of an ordered constitutional progress, has come apparent failure in the effort to establish representative government. The name of a republic has been maintained, it is true, and the forms of constitutional government have been retained, but a permanent national government has not been set up, nor has popular government replaced the paternal despotism of the past.

A variety of causes have produced this result. Among these causes may be noted the lack of readiness of the people to assume power; the lack of an adequate understanding, on the part of the revolutionary leaders, of the problems, the difficulties and the responsibilities of parliamentary government; the complication of the internal problem by the nature of the relationships established by the European Powers in China, both with respect to the Republic itself and among themselves; the new problems created by the outbreak of the World War, with the concentration of the attention of Europe and the United States on the European situation, which has made possible the development of Japanese hegemony in the Far East; and finally, the presence in China of a military power, which, existing by the side of the civil administration from the beginning, was able to completely overshadow it and finally to entrench itself in control of the government. The last of these causes of the failure of representative government in China deserves a more extended consideration than has commonly been given it in discussions of Chinese politics.

During the first years of the Republic the power of the military chiefs was in the provinces rather than in the national government, and their final control of the central government has rested upon their strength in the provinces. Consequently, in order to understand the successive mutations of national politics, it is necessary to consider the structure of the provincial and local governments, for in the nature of local government in China, and in the relationships of the provinces and the central government, can be found the explanation of the fact that regardless of the control at Peking, or the apparent division of the country, the Chinese people have continued in their usual manner of living, undisturbed by revolution, or by foreign domination of the state. No matter how extensive the foreign control of the national government, China will continue to exist through her local institutions.

Before the foreign impact on China began to be felt the administration of the country was extremely decentralized. Communication between the capital and the provinces, and between

provinces, was slow and unsatisfactory; the lack of facilities for travel prevented a strong central control or the growth of any great feeling of unity among the provinces. The country was not in intimate relationship with the non-Chinese world, and its very isolation aided in emphasizing internal differences of habit and tradition. These differences were very marked in respect to such things as dialect, food preparation, and even law. To the individual a man from another province was a stranger, a foreigner. There was developed a provincial and a local, rather than a national feeling. Instead of a man calling himself a Chinese, he was an Anhui or Kuangtung man. This spirit of provincialism was further developed through the differences existing between sections within the province. Thus, the Anhui man was more definitely particularized as being from a certain hsien, or district, within the province. Hsien pride was even more highly developed than provincial patriotism.

From the political and imperial standpoint, this provincial distinctness was recognized in the large measure of administrative autonomy accorded to the province. As Morse points out,<sup>1</sup> as long as it contributed its share of the imperial revenue, and followed the general policy of the central government, there was no direct interference in the affairs of the province. And even in determining the general policy of the state, the action of the Emperor tended toward the hortatory rather than the mandatory.

This feeling of the distinctness of provincial from imperial interest was well brought out at the time when England was using force to secure the opening of the country to foreign intercourse. During the second of the so-called Opium Wars, when the British were engaged in active operations against the city of Canton, friendly relations with the people and officials were maintained at the other "open" ports. Later, when the British and French were hammering on the gates of Peking, and the Court had been forced to flee to the North, the imperial authorities at Shanghai felt entirely free to accept British aid in the

<sup>1</sup> *Trade and Administration of the Chinese Empire*, pp. 48-49. See also *Village Life in China*, by Liang and Tao, pp. 46-47.

defence of the city against the Taiping rebels.<sup>2</sup> Even at so recent a time as the war between the Japanese and the Chinese in 1894-95, the southern and central provinces refused to lend their full strength to the defence of the northern frontier on the ground that their interests were not affected. Not only was there a feeling of the separateness of provincial from imperial interests, but there was a similar lack of integration of the interests of neighboring provinces. For example, in time of a flood of the Yellow River, instead of all of the affected provinces coöperatively safeguarding the common interests, each province safeguarded itself without considering the way in which the measures taken might be adversely affecting its neighbor. This lack of coöperation extended into many phases of inter-provincial life.

From the structural standpoint, pre-revolutionary China had a well-worked-out provincial administrative system. All of the officials from the highest, the viceroy or governor, to the lowest, the district magistrate, were appointed and removed by the Emperor. Gradations in the provincial hierarchy were carefully worked out to the end that there should be a definite fixation of responsibility. Thus the viceroy was held responsible for the maintenance of peace, order and prosperity in the province or provinces under his jurisdiction; the governor in the province; the prefect in the largest territorial division of the province; and the magistrate in the district. But within the broad restrictions necessitated in maintaining peace and order, transmitting the required funds to the imperial treasury, and not directly acting counter to the general policy prescribed from Peking, the officials were permitted large discretion in their respective governments. Consequently ways and means were determined locally rather than nationally, with the result that direct imperial commands were executed variously from province to province, according to the variations in local custom and tradition, and also according to the difference in point of view and interest of the provincial officials. In the same way there was a similar, although perhaps lesser, variation from district

<sup>2</sup> Williams, *Middle Kingdom*, II, p. 606.

to district within the province. The large discretionary power exercised by the provincial officer was brought out very clearly in 1900 during the Boxer troubles. At that time the imperial instructions were carried out completely in Chihli province, but were as completely disregarded by Yuan Shih-kai in Shantung, and by Chang Chih-tung in the central Yangtze provinces. Similarly, national treaty obligations were carried out differently in different parts of the country. This is revealed in the communications addressed from time to time to the Chinese government by the representatives of the Powers. The lack of uniformity is further shown in the expostulations of the Emperor Kuang Hsu at the time of the reform movement of 1898. In one of the edicts of the times he exhorts the officials to a greater show of zeal in carrying out the proposed reforms, pointing out the fact that while changes had been made in some provinces, in others nothing at all had been done to carry out the imperial policy.

Up to the beginning of the constitutional movement in 1905, the provincial governor had the same theoretically unlimited authority in the province as the Emperor had in the Empire. Both were, however, unlimited only in theory, since the danger of uprising against their authority forced them to govern their actions by the prescriptions of custom and tradition. In China, a country of custom ingrained and fixed through the centuries, the possibility of insurrection naturally constituted a very great limitation on the exercise of power. But disorder or the threat of disorder was the only way of calling attention to popular feeling, and this method was used chiefly in grave cases, or in times of economic disturbance. No branch of either the national or provincial government served as the exponent of public opinion.<sup>3</sup> The most important feature of the constitutional movement under the Manchus, was the endeavor to establish representative assemblies. This movement resulted in a very important modification of the provincial governments.

<sup>3</sup> There was, it is true, the censorate, to keep the Emperor in touch with the provinces, but the censors represented the Emperor and not the people, and were interested in public opinion only as a reflection on the exercise of power by an imperial officer.

An imperial edict issued in 1907 provided for the establishment of assemblies in the provinces with "the power to discuss, pass resolutions, and apply to their Viceroy or Governors for decision and execution."<sup>4</sup> These assemblies were actually established and opened in the fall of 1909. Of their powers and position it has been said that an assembly is "the connecting link between local and national government; secondly it is a channel to direct the opinions of the people of a province to the notice of the executive, in order that the executive may have a more complete knowledge of the needs of the people than it would otherwise obtain; but the assembly is only a channel of speech. It is not an instrument for action; it can only offer advice; and the advice it may offer is strictly confined to matters within definite limits; and thirdly the assembly performs a function of education. It trains men and provides them with experience for the higher duties to be met with in the national Parliament. In addition to these main purposes, it has the right to criticise and censure the action of executive officials, though it has no power to punish or degrade."<sup>5</sup> After their convocation these assemblies immediately began to assert themselves in the limited field marked out for their activity, and to assume even greater powers than had been granted. In addition to interfering in provincial matters, they constituted a focal point for provincial opposition to the central government and for the agitation for an early summoning of the national parliament. By 1911 the assembly had established itself as an effective part of the provincial system of government.

During the ten year period preceding the downfall of the Manchus the problems of foreign intercourse had brought home to the imperial authorities the necessity for a greater centralization of the state. Peking had been forced to interfere more and more in the administration of the provinces in order to secure greater uniformity in the execution of public policy. This movement toward centralization had, of course, aroused great

<sup>4</sup> *China Year Book*, 1912, p. 355.

<sup>5</sup> Bevan, *Constitution Building in China*. Cited in *China Year Book*, 1912, p. 384.



opposition in the provinces. With the beginnings of the constitutional movement, after 1905, a general policy of centralization had been definitely adopted. This was extended to railroad construction and operation. The policy of extended construction under central direction necessarily involved the introduction of increased amounts of foreign capital into China, and it also forecast the limitation of provincial railway enterprise. Consequently, provincial opposition to the policy developed so strongly that it had to be virtually abandoned. At the time of the conclusion of the Hukuang railway loan with the Four Power Banking Group, in the spring of 1911, open revolt came in the great western province, Szechuen. The spirit of revolt spread until, in the fall of 1911, it resulted in the revolution which brought about the abdication of the Manchu Emperor.

The Chinese revolution of 1911 was not a carefully planned, well-organized movement. It got under way in the various provinces at different times and for differing reasons. There had been a long continued anti-Manchu agitation directed by revolutionary organizations, it is true, but the actual outbreak was spontaneous, and it was only with the growth of the movement that it came under a common direction.<sup>6</sup> The immediate cause of the initial blow at Wuchang was a mutiny of the imperial troops stationed there. The direction of the Wuchang operations was put in the hands of one of the imperial officers, Li Yuan-hung. Because of his strategic location<sup>7</sup> General Li rapidly became a dominating figure in the revolutionary councils. The mutiny at Wuchang was followed by the formation of a revolutionary party at Shanghai; and by the repudiation of the Manchu authority by the commanders of the Yangtze fleet, and the reduction of Nanking through the combined action of a military and naval force, which gave the revolutionists control of central China, and also cut off the southern provinces from Peking. The provinces to the south of the Yangtze one by one joined the opposition to the Manchus. In many cases this was accomplished by the provincial officials announcing their adher-

<sup>6</sup> *China Year Book*, 1912, pp. xi-xii.

<sup>7</sup> At the central point of the Yangtze valley.

ence to the revolutionary cause through a simple declaration of the independence of the province. Where the officials remained faithful to the central government, control was assumed either by revolutionary bodies or by the regular provincial assemblies. Finally, in order that there should be some common authority empowered to speak for the revolution, the self-constituted "Military Government of the Chinese People" which had come into power at Shanghai requested the "independent" provinces to send delegates to Nanking to form a government able to speak for all factions.<sup>8</sup> These delegates were appointed in various ways, depending upon the nature of the control in the provinces. Thus some were appointed by the provincial assemblies, some by the officials who controlled the province, and some were self-appointed.<sup>9</sup> It was with this Nanking assembly that Yuan Shih-kai negotiated the settlement by which the Manchu Emperor abdicated, and the republican form of government was accepted for a united China.

The conclusion of peace naturally found considerable bodies of men under arms in all parts of China. At the time of the outbreak there were two types of effective military organization in the country. In 1901 the imperial government had begun the development of a national army, the Lu-chun. Eventually the direction and control of this force was to be centralized in a board of war at Peking, with a distinct military organization in the provinces. By 1911 thirty-six divisions had been organized but only a part of this force had been removed from the control of the viceroys or governors. In addition to this national army, each province had its own force, which was in the nature of a provincial constabulary. These troops were under the direct control of the viceroy.<sup>10</sup> Furthermore they were paid from the provincial purse. Consequently the obedience of the soldier was rendered to the governor or commander, and he proved equally

<sup>8</sup> Up to this time the imperial government had dealt with Li Yuan-hung as the leader of the revolution.

<sup>9</sup> These last were the "gentry" of the province, who were looked to as leaders in the absence of any official direction.

<sup>10</sup> *China Year Book*, 1912, ch. 15. By an imperial edict of 1907 the viceroy was given control of the military administration in his jurisdiction. *Ibid.* p., 237.

ready to fight for the Emperor or against him as the will and interest of his employer directed. These regular troops were increased in every province with the progress of the revolution, recruits coming particularly from among those whose economic condition was poor. In many cases bands of brigands were transformed into regular troops under the command of the provincial authorities.

At a time when civil control was relaxed, the more soldiers a man had under his command the greater would be his political influence. Military dictatorships were set up in many of the provinces both in the North and the South, there being only this difference between the two sections of the country: the southern commanders paid lip-service to the cause of the revolution, while the northern generals continued to recognize the imperial authority. In addition to military provincial governments, individual military leaders had to be reckoned with as semi-independent powers,<sup>11</sup> existing in many provinces as *imperia in imperio*.

Yuan Shih-kai's accession to the presidency in 1912 was decidedly the result of a compromise between conflicting interests. By the terms of the abdication edicts he was given full power to establish a republican government for China, and to reach an agreement with the Nanking revolutionary government by which the North and the South would be united. As the supreme commander of the imperial forces, he alone had the allegiance of the northern generals. Either the revolutionary party must accept Yuan and give him position and power in the Republic or it must overthrow him by force. The latter appeared to be impossible since the southern leaders had reached the end of their financial resources. An agreement was reached, therefore, by which he accepted the principles of the revolution and was chosen by the Nanking assembly as the provisional President of the Republic.<sup>12</sup>

<sup>11</sup> Such as General Chang Hsun, the commander of the imperial forces at Nanking.

<sup>12</sup> Li Yuan-hung was chosen vice-president. However, he remained at his post in central China.

The new government recognized the existing condition by accepting the *de facto* authority in the province, whatever its source, and authorizing it as the temporary agency for provincial administration. North of the Yangtze the provincial authorities followed the leadership of Yuan Shih-kai, while in the rest of the country Parliament was recognized as supreme. Immediately upon the establishment of the government a conflict developed between the executive and the assembly. Yuan Shih-kai was interested mainly in restoring the country to a condition of peace and order; the assembly in asserting the supremacy of Parliament over the executive under the Nanking provisional constitution. Because of this difference in aim the policy of the President appeared to be constructive, and that of Parliament obstructive. Consequently even liberals of the type of Liang Ch'i-Ch'ao<sup>13</sup> came to support extensions of executive power as opposed to that of Parliament. Conflict both in the provinces and in Peking resulted in triumphs for the President.

Early in 1913 President Yuan began the necessary work of reestablishing civil government in the provinces to replace the control of the military. Had he begun differently he might have conciliated the elements antagonistic to his authority, but he first appointed civil administrators in the provinces where the opposition was in control, thus casting a doubt on the sincerity of his desire to replace military with civil authority except where, by so doing, he could strengthen his own position. On the other hand, it can be argued reasonably that since Parliament had shown an inability to grapple with the problems of the state and to present a constructive policy for their solution, the good of the country demanded that Yuan Shih-kai should not weaken his own control. Such a weakening might well have followed the establishing of civil government in the northern provinces before the President has consolidated his power in the center and south of the country.

An uprising (the Summer Revolution of 1913) followed the appointment of a civil administrator to share the authority of the Tuchun, or military governor, of Kiangsi province. The

<sup>13</sup> One of the leaders in the reform movement of 1898.

revolt was easily put down, and it was followed by the virtual dissolution of Parliament through the dissolution of the Kuo Ming or Radical party which was suspected of a share in the revolt. Yuan Shih-kai then proceeded to rule as dictator, although he preserved the forms of constitutional government. The constitutional compact<sup>14</sup> replaced the Nanking constitution as the supreme law of the land. Under it, the President was given the dominating position in the government, the representative body provided for being given no powers which could be used to limit executive control. Yuan, however, was not satisfied with the fact of power, but wished the name also. Consequently an attempt was made to replace the dictatorship in the Republic by the reestablishment of the monarchy with Yuan Shih-kai as Emperor.

With the failure of the monarchy movement and the death of Yuan came a change in the internal struggle. The power of the President had resulted from his control of the leaders of the army, both provincial and national. No one of the Tuchuns was strong enough to dispute his control, and parliamentary government had been impossible because of it. With the removal of his strong hand the northern military party proved to be leaderless. The new President, Li Yuan-hung<sup>15</sup> was a military man but more in sympathy with the southern than the northern point of view. Yuan Shih-kai's chief lieutenant, Tuan Chi-jui, exercised the real executive power through his position as premier, and thus had some claim to leadership. But while a member of the northern military party, Tuan did not occupy a position of undisputed leadership of all elements in the party as had his chief.

<sup>14</sup> Framed by a conference or council set up by the President.

<sup>15</sup> The fact that power in the government was proportioned to the direct control of troops is well illustrated in the career of Li Yuan-hung. While he remained among his soldiery at Wuchang he was a power to be reckoned with, but when he left Wuchang to assume his vice-presidential office in Peking, at the request of the President, he became negligible as a factor in national and provincial politics until his accession to the presidency. He succeeded to that office because to have left the regular line of succession would have precipitated a struggle between contesting factions in the military party.

Parliament came back to Peking after the collapse of the monarchy movement, restored to its full powers and dominating position under the Nanking constitution. The President immediately announced his intention of accepting his constitutional position of practical subordination to the Parliament. For a time it seemed that an orderly evolution toward true parliamentary government would be possible. The chief military leader in the state having been removed, all that the central government had to contend against was a divided military power without an accepted leadership. Singly the military chiefs could not hope to retain the power that had been gained by submission to a common leadership.

That the Tuchuns were no more prepared to acquiesce in parliamentary government than they had been during the rule of Yuan Shih-kai was soon indicated. Lacking the leadership of one man, they resorted to conference action to reach an agreement on a common policy. The first conference was held under the direction of the most notorious of their number, Chang Hsun,<sup>16</sup> at his stronghold, Hsuehchow, in the fall of 1916, shortly after the meeting of Parliament. At that time a theoretical "union" of the provinces was effected which was nothing but a league of the military leaders of the northern provinces, formed for the purpose of perpetuating their own power. At this first meeting virtual notice was served on Parliament that it would do well not to forget the presence in China of a power prepared to protect its own interests, by force if necessary, against the civil authority. This threat caused considerable apprehension for a time, but as words were not followed by action the Peking government gradually lost its sense of insecurity.

Until early in 1917 nothing further was heard from the Tuchuns directly, except as military backing enabled Tuan Chi-jui to maintain himself in a struggle against Parliament. In February

<sup>16</sup> Chang Hsun had risen to position from the ranks. In 1911 he was commander-in-chief of the Kiangnan forces. When driven from Nanking by the revolutionists he retreated with his troops up the railroad toward Tientsin. After the abdication he was subsidized by the government to prevent his acting against it. Aside from this subsidy, he maintained himself on the loot taken from Nanking at the time of its evacuation, and by levying tribute on the country.

came the announcement of the extended German submarine warfare. Under the leadership of the United States, China protested against it as a violation of international law. During the next few months the government was forced step by step toward a declaration of war on Germany. The progress of events naturally brought a difference of opinion as to the proper policy to be pursued. This eventually developed into a struggle between the premier and the majority party in Parliament. Finally, in order to show a public opinion supporting his war policy, and also in order to divert attention from the unsatisfactory state of negotiations with the Allied Powers in regard to the conditions of Chinese participation in the war, the premier summoned a conference of the military chiefs to consider the question at issue. This again brought the question of military dictation of policy to the front. The conference declared for the war policy and preparations were made to secure the necessary parliamentary authorization. From all indications, the government had a sufficient majority in Parliament to pass the war bill. But, unfortunately, as Parliament was about to consider the measure, a mob shouting for favorable action, assembled outside the parliamentary building. Parliament took this demonstration as an attempt to force its hand and refused to act. The cabinet, with the exception of the premier, resigned, and Parliament demanded his resignation. He refused to vacate his office voluntarily, but stood his ground until the President dismissed him.

All of this brought an immediate response from the northern militarists. They protested against the dismissal of Tuan, and then demanded the dissolution of Parliament, basing the demand for a dissolution on the unsatisfactory nature of the permanent constitution in the process of formulation by Parliament. The President, at first, refused to dissolve Parliament, so that in order to gain their point several of the Tuchuns declared their provinces "independent" and organized a punitive expedition against Peking. In addition to this a revolutionary government was established in Tientsin. President Li finally weakened to the extent of asking one of the military leaders, Chang Hsun, to

come to Peking to mediate. One result of this mediation was the dissolution of Parliament. Another was the temporary establishment of Chang Hsun as dictator to the central government. His dictatorship resulted in an abortive attempt to bring the Manchu Emperor back to power. The Tuchuns marching on Peking met this move, however, by changing the aim of their punitive expedition from the overthrow of Parliament to the restoration of the Republic and, under the leadership of Tuan Chi-jui, soon effected their object.

The rapid succession of events from February to August, 1917, had resulted in a second dissolution of Parliament; the assumption of control of the central government by the northern militarists; the restoration of Tuan Chi-jui, and the resignation of President Li, who had been forced to flee to the Legation Quarter at the time of Chang Hsun's coup d'état, and who refused to resume his office, giving way formally to the vice-president, General Fêng Kuo-chang. The new President was the leader of one faction of the Peiyang military party.<sup>17</sup> It soon developed that the premier was the leader of another, so that the new régime was not destined to be an harmonious one. The squabbles at Peking, however, were more in the nature of personal contests for power than a struggle between widely different ideas.

During the months following the dissolution of Parliament its members gradually concentrated in the South, finally establishing a constitutional government with headquarters at Canton. The southern provinces supported the Canton government in the struggle that was undertaken against the government in the North, and the country was divided along the same territorial lines that had marked the division of territory between the revolutionists and the Manchus in 1911. As time went on the contest took on more the character of the "outs" to get in, and "ins" to stay there, than a struggle between two principles of government—the civil against the military. The southern

<sup>17</sup> General Fêng recognized the danger to his power if he left his troops. For that reason he entered upon extended negotiations to safeguard himself before he would consent to come to Peking.



provinces had developed the same type of military government as that which had assumed control of the North, and the southern militarists began to gain control of the southern government.

The war was not carried on very vigorously by either side, there being frequent attempts to find a basis of agreement satisfactory to all elements. At last a peace conference was convened at Shanghai to settle the struggle. One of the great obstacles to peace was recognized to be the presence of so many men under arms, and the continued interference of the military chiefs in the determination of the policy of the government. One of the propositions brought before the conference by the southern delegation provided for the reduction of troops to the pre-revolutionary number, and the abolition of the office of Tuchun (military governor). These two propositions, if assented to and carried out in good faith by both sides, would have resulted in the disestablishment of the military party both in the North and the South, and would have removed the greatest single obstacle in the way of the progressive development of democratic government in China. The Tuchuns, however, were not prepared to abdicate voluntarily, so that no solution of the question at issue was arrived at, nor have the months from the opening of the conference in December, 1918, to the present time brought any agreement.<sup>18</sup>

Not only has it been impossible to reunite the north and the south politically, but factional strife within both the northern and southern governments has brought further complications. So long as the northern military leaders were confronted by the parliamentary party, interest dictated coöperation among themselves. But when they found themselves in undisputed control of the Peking government they began to diverge in their interests. First came the struggle between Tuan Chi-jui, the premier, and the President, Fêng Kuo-chang. After the elimination of Fêng and the election of Hsü Shih-chang as president, the military chiefs grouped themselves in two main parties, the Anhui group under the leadership of Tuan Chi-jui, and the Chihli

<sup>18</sup> In October, 1920, the Kwangsi government returned to Peking allegiance, and the president announced the unification of the country. But renewed activity in the south by Dr. Sun Yat-Sen indicates that unity is not yet attained.

group led by such men as Tsao Kun, the viceroy of Chihli province and Chang Tso-lin, the viceroy of the three Manchurian provinces.

The Anhui group, organized as the Anfu Club (Society for Peace and Blessing)—ostensibly for the purpose of electing Hsü Shih-chang to the presidency—gained and retained control of the Peking government for the year and a half from the time of its organization to July, 1920. The club used its control to perpetuate the power of its members. In order to do this, it necessarily tended to exclude non-Anfu men from participation in the division of the spoils of office. The members of the club financed themselves by repeated borrowings from Japan and, consequently, any movement to oust them from power would naturally have considerable popular support.<sup>19</sup>

The antagonism between the two factions in the North brought them to blows in the summer of 1920. The immediate cause of the open rupture seems to have been the refusal of the government to furnish the money necessary to enable the Chihli commanders to pay their troops. The issue was joined when Tuan Chi-jui asked the President to issue a mandate dismissing Tsao Kun and one of his division commanders, Wu Pei-fu. The grounds assigned were that the latter had requested permission to return north with his troops from Hunan province, and when the request had been granted, instead of returning directly the troops had delayed in Honan province.<sup>20</sup> Under pressure President Hsü Shih-chang issued the mandate.<sup>21</sup> General Wu however, led his troops against Peking and, supported by Fêng-tien troops sent to his assistance by General Chang Tso-lin, he was able to force Tuan and the adherents of the Anfu Club to seek shelter at the Japanese legation.

<sup>19</sup> In fact the "student movement" was developed largely because of the reported selling out of the country to Japan. The movement took on the form of a propaganda among the lower classes and in the army for the purpose of enlightening the people as to the true state of affairs both internally and externally. Undoubtedly the student agitation and propaganda had something to do with the easy overthrow of the Anfu Club.

<sup>20</sup> For summary of Tuan's statement and request see *Millard's Review*, July 31, 1920, pp. 469-470.

<sup>21</sup> For the text of the dismissal mandate see *ibid.*

The first reaction to the change was that it meant the elimination of military government, since General Wu proposed the summoning of a national convention to determine all of the points at issue in the state.<sup>22</sup> So far, however, the only practical result has been the transfer of power from one military clique to another.

What have been the means by which the Tuchuns have supported themselves and their troops? During the months following the outbreak of the revolution in 1911 the collection of money for the imperial government naturally ceased in the rebellious provinces. Such revenue as was collected was retained in the provincial treasuries, and was used to defray the expenses of provincial administration. Since the military commander controlled the government in many of the provinces, he made the maintenance of his troops a first charge on the revenue. As the allegiance of the troops was largely personal, no matter what his source of supply the commander was regarded as the actual source of revenue by his men. However, even with his direct personal interest in the payment of the troops, the Tuchun because of the inadequacy of the available revenue, continually found himself in financial difficulties. With the unsettled condition of the country it was hard to collect the taxes, and to keep a regular inflow of money. Consequently, when the new government was set up under Yuan Shih-kai, the pay of the soldiers was greatly in arrears.<sup>23</sup> To disband them without full payment would have aroused dissatisfaction and perhaps produced open revolt against the new régime. Furthermore, the commanders refused to demobilize the men without entire payment. From another point of view, demobilization presented a serious problem: that of restoring the men to civil life on such

<sup>22</sup> A similar demand came from the students. General Wu became a national hero, because of his attitude. But his chief Tsao Kun, and General Chang seem to have refused to accept his proposals, and by himself he did not have sufficient power to demand action.

<sup>23</sup> It may reasonably be argued that it was to the commander's interest to have the pay in arrears since that gave him an additional hold on his men. Of course he had to keep them fed and clothed, and see that they were partly paid in order to prevent a dangerous dissatisfaction.

terms as to enable them to earn a living, and thus prevent them from becoming charges on the community, or being forced into a condition of banditry. Because of lack of financial resource, then, the government was unable to cope with the problem of the military, even if it had had the desire.<sup>24</sup>

In addition to the payment of the men, there was the necessity of finding enough money to buy off the military leaders who were not prepared to give up their dominating position without some personal recompense. Since the government could not get rid of them, the only thing that could be done, seemingly, was to make use of the Tuchuns and their troops. As has already been pointed out, in most cases their position as the de facto provincial governments was legalized, and they were used to maintain peace and order in the provinces until civil authority could be reestablished.<sup>25</sup> It was much better, for example, to give General Chang Hsun a title, and interest him in the maintenance of the new government, than to make him its active enemy, especially in view of the fact that he had a sufficient following to maintain himself by force of arms. But, of course, the longer the government delayed its action, the greater grew the difficulty of acting, for the amount of back pay due the soldiers increased, and their leaders became ever less desirous of reaching an agreement by which they would lose their power. Had Yuan Shih-kai not allowed personal ambition to obscure the needs of the state, a gradual transition from a war to a peace basis might have been effected and the Tuchuns have been made the servants of the state instead of its masters. But he used the military power in the province to advance his own ends, precipitating a struggle that brought into definite antagonism the advocates of civil government and his military supporters. If Li Yuan-hung had been a strong personality instead of "an idol with feet of clay" the subordination of the military to the civil

<sup>24</sup> One of the purposes to which the "reorganization loan" of 1913 was to be devoted was the disbandment of the troops. However the development of the struggle between Yuan and Parliament prevented the undertaking of the work.

<sup>25</sup> As a matter of fact, order was maintained in the provinces under the control of the strong leaders.

power might well have been brought about even as late as 1917. But each successive crisis in national politics worked to strengthen the position of those in control of the provinces, until they were able to establish themselves in absolute control of the national government as well as the government of the provinces.

Since the militarists have had such a large part in the modification of the direction of the constitutional movement in China, it is fair to ask, in conclusion, what use they have made of their power since it has been firmly established. Peace, and a consequent prosperity, have not been brought about in China, as is shown by the continuance of the civil war. It was only the protest of the Powers, and the threat of a refusal of funds from abroad, that brought the northerners into conference at Shanghai. The country as a whole has suspected, with a considerable show of reason, that the central government has been accepting dictation of its policy from Tokyo in return for aid in the form of loans. This suspicion, coupled with the Shantung award made at Paris, has produced a nation-wide protest directed against Japan in the form of a boycott, and against the central government in the form of mob demonstrations, the formation of patriotic societies and threats against the lives of officials suspected of selling out the country to its island neighbor. During the period from 1917 to April, 1920, excluding 1919, there were nineteen separate loans concluded with Japan, totalling yen 281,543,762, some of them for administrative expenses, others ostensibly for industrial development. In 1919 alone twenty-two loans were made, principally from Japan. Some of these sums were obtained without definite security, but many were secured by provincial revenues or were made in return for mining or other concessions. Little of the money received has actually been used for the development of the country, either politically or economically. It is, of course, impossible to say how much of it has gone to line the pockets of the officials of the civil and military services, but certainly a large share of it has been used to maintain the military power in control of China and to provide retiring allowances for officials.<sup>26</sup>

<sup>26</sup> See *Millard's Review* for February 5 and 19, on the influence of the association of Chinese bankers in beginning a reform of governmental methods.

A writer in *Millard's Review* says of the militarists that they "are not militaristic and autocratic in the philosophical, fanatical and semi-religious sense in which their contemporaries in Germany and Japan are obsessed. Nor are they united as the vassals of a common demi-god or Emperor. They have no dreams of *Weltpolitik*, neither are they possessed of the idea that they are ordained of God to rule the earth. They pursue their policy for perfectly selfish and unromantic reasons—for *fuh-kuei*, wealth and position, of which *kuei*, or position, is merely the temporary stepping stone to the ultimate ambition, *fuh*, which is measured in dollars and taels. They are mutual friends when it pays to be friends, meeting with the 'glad' hand and a dagger up the sleeve, intriguing with one another, cliquing together or selling one another out, hesitating in fear and uncertainty, always with a foresight as far as the end of their noses and a policy as variable as the Peking winds. . . . There is no settled policy on anything in Peking today, except that of getting as much private gain out of the business of government as possible. To this one principle the majority of officials wholeheartedly and unreservedly subscribe."

It is to this government for personal gain that China has come in the course of her endeavor to shake off an alien autocracy and stand with the democratic states of the world. New forces, however, have been set in motion recently, which may ultimately weaken the hold of the military chiefs on the state. A patriotic wave has swept the country as a result of the Far Eastern settlement at Paris; a national patriotism is in the process of development, and this new spirit, under proper leadership, is directing its action, not alone against illegitimate foreign interests in China, but against the military octopus which has enveloped the political and administrative machinery of the state.

## LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

**Governors' Messages, 1921.** The meetings of forty state legislatures this year is an event of considerable political importance but as usual they have attracted little attention except locally in each of the states concerned. Yet these sessions afford an unequalled opportunity for a review of great public questions; they throw light on those local conditions, political, social and economic, which ultimately determine national opinion. Legislative leadership is apt to be diffused, obscure or uncertain, working in committee rooms, hotel lobbies, or party headquarters, so that it is difficult without an intensive study of a mass of reports and public documents, or local investigation, to learn what the states are doing or planning to do. For this reason, the biennial or inaugural messages of the governors constitute the best source of information. Furthermore in spite of much talk about "executive usurpation" and "dictatorship," the governor still supplies much of the necessary leadership and initiative in state affairs.

Many of the questions discussed are of course, largely of local importance. Governor Allen recommends that Kansas engage in the manufacture of brick for highway construction; Governor McMaster advises a state cement plant for South Dakota; Governor Goodrich urges a revival of the Indiana sterilization law; Governor San Souci again urges the abolition of property qualifications for the suffrage in Rhode Island. All the states have local problems of institutional management, highway construction, education, or public welfare. There are others however so broad in scope and so general in character, that they are of national interest.

Four years ago the striking feature of the governors' messages was the critical attitude toward the form of state government. Two years ago most attention was given to state services during the war and the problems of reconstruction. There is a close connection between this year's problems and those of the last biennium. Reconstruction problems have proved decidedly different from those anticipated two years ago, but the effects of the war are everywhere apparent.

*Economy and Administrative Reform.* Governor Miller's comments on the imperative need of economy in New York are repeated in one form or another in practically every state. There is a nation wide recognition of the fact which Governor Kendall of Iowa points out in his inaugural that "while the people are compelled to practice a judicious frugality themselves, they are in no mood to tolerate a prodigal extravagance in those they have selected to represent them." Several governors comment on the necessity of dropping the war-time habit of thinking of public expenditures in terms of billions and turning to the more prosaic task of saving thousands. Governor Lake of Connecticut, commenting on the vicious results following the widespread overestimate of the possibilities of taxation, urges that the state adopt a consistent policy of refusing new projects calling for further expenditures, keeping existing enterprises within the narrowest possible limits, a more business-like administration of institutions and departments, consolidation of offices and elimination of useless places.

Administrative reform is making headway. Governor Hart of Washington gives the chief place in his message to an administrative code based on that successfully put in operation in Illinois and several other states. Governor Davis of Ohio refers to the economy and greater efficiency produced by the Idaho consolidation and reorganization measures of 1919. In several other states, notably Oregon, Kansas, and West Virginia, immediate reforms of the same sort are urged together with improved budgetary procedure.

The introduction of economy is however far from being a simple matter. Coupled with such recommendations one finds comment on overcrowded classrooms and inadequate facilities at the state universities, on the resignation of professors, teachers, and public officials because of inadequate salaries, on growing costs of institutional upkeep. In both Oregon and California the people are reminded that by use of the initiative they have placed great burdens on their own shoulders and must be prepared to accept the responsibility.

Great bond issues for highways and soldiers bonuses were voted at the November elections in several states. There is unremitting pressure for expenditure on all sorts of welfare schemes, better housing, home ownership, conservation, social insurance, and a score of others. Perhaps Governor Mechem of New Mexico goes to the heart of the problem when he asks, "Does the present high cost of government produce benefits in proportion to its cost? Further, are those benefits enjoyed by the great majority of the people?" "More and more,"



says Governor Hartness of Vermont, "we find governmental action being swayed by the expression of various groups through their official representatives." Economy programs will certainly encounter plenty of opposition from interested parties.

*Taxation.* A natural complement of the economy problem is taxation, and here again there is practical unanimity on the part of the governors that new sources of revenue are imperatively needed. Governor Edwards of New Jersey is almost alone in his statement that the state need seek no new revenues at the present time. There is a general agreement that real estate can not carry any further burdens. In more than a dozen states the income tax is urged. Governor Carey of Wyoming remarks that in spite of its unpopularity due to the way in which it has been administered by the national government, it will have to be generally adopted. The demand appears in such diverse and widely separated states as New Hampshire and New Mexico, South Carolina and Montana. Heavier inheritance taxes are urged in several states.

In the mining states the perennial question of mine taxation draws unusual attention, opinion generally favoring some form of tonnage tax as opposed to the old type of property tax. In the oil-producing states the governors urge a more scientific form of taxation that will increase revenues from this source. In West Virginia and Pennsylvania, the governors urge a bill-board tax both for revenue and as a means of checking a growing nuisance. The retiring governor of Iowa recommends much heavier assessment of "vacant, idle, real property, for the burden all such property imposes in retarding commercial progress." Governor Blaine urges that the Wisconsin income tax exemptions be made the same as the national and that all returns be opened to the public as a check on evasion. Governor Hart advises meeting the cost of the soldiers bonus by a poll tax of five dollars on all persons over twenty-one. Apparently the pinch of direct taxation is only beginning.

*Law Enforcement.* Another phase of the war aftermath receives general attention, the wave of lawlessness and crime. From the governors' standpoint it is largely an administrative problem. There is comment on the need of greater state coöperation in making the Eighteenth Amendment effective, but the bootlegger and moonshiner are not the only problems. Governor after governor comments on the indifference and incompetence of sheriffs and county attorneys who wink at law breaking. Governor Carey declares that Wyoming

loses large sums due from automobile licenses because local officers are unwilling to offend their friends by enforcing the law. The same is true in many states of far more serious offenses. The governor can only carry out his constitutional duty of seeing the laws faithfully executed if he has adequate control of local peace officers or a properly organized state constabulary. The governors of Pennsylvania and California go further and point out the need for an improved administration of criminal justice to supplement the work of executive officers. Governor Cornwell gives an interesting history of the disorders which necessitated the use of United States troops in West Virginia; and urges the establishment of an effective force of public officers to cope with such emergencies. He roundly condemns the use of private armed forces by corporations, an opinion which is fully shared by Governor Dixon of Montana.

*Direct Primaries.* With the exception of administrative reform and consolidation, problems of governmental structure and functioning are not generally considered this year. Governor Blaine's dissertation on the virtues of the initiative, referendum and recall seems somewhat anomalous. The direct primary, however, receives considerable and usually unflattering comment. "Time and experience" declares Governor Hart of Washington "have demonstrated that the direct primary is not the rose strewn pathway that leads to the political Utopia dreamed by its sponsors," and he proceeds to describe the "demoralization of responsible party organizations," the "unfair advantage to minority parties and groups" with the advice that the state convention be restored. It is "absurd and politically dishonest" declares Governor Preus of Minnesota. "It defeats the very purpose of its original design by reason of the pernicious practices that have grown up and are seemingly incurable," is the opinion of Governor Robertson of Oklahoma. A few governors are somewhat less drastic in their condemnation and suggest modification rather than abolition, Governor Cox of Massachusetts pointing out that many of the fundamental weaknesses of the primary would be eliminated by the adoption of the short ballot.

*Blue Sky Laws.* An interesting reflection of recent business history is seen in the widespread demand for "blue sky laws," a demand found in all sections of the country. Governor Davis points to "the avalanche of worthless securities" foisted on the people of Ohio, and Governor Kendall to the "saturnalia of stock jobbery" and the inadequate laws which made Iowa "a rendezvous for every crooked exploiter

in the Mississippi valley." Governor Cox declares that the people of Massachusetts are robbed of thirty millions annually by purchase of fraudulent securities and that the distrust and resentment caused thereby constitute a menace to Americanization and good citizenship. In Kansas, Rhode Island, New Mexico, Idaho and Indiana the story is the same.

*Marketing.* The depression of agricultural prices at the present time is naturally the subject of discussion especially in the western states. While there are two or three censures on the conduct of the federal reserve board, there is a general recognition of the ineffectiveness of legislation in meeting such conditions. "The power of California to deal with economic problems is limited by inflexible economic laws," says Governor Stephens, and this limitation seems to be generally accepted. Better marketing supervision, the removal of any legal obstacles to coöperative farmer organizations; or their active encouragement, uniform package and inspection laws, and similar methods are urged. Governor Preus advises that Minnesota farmers establish their own distributing exchanges for the collective sale of their produce or that they organize stock corporations, with seats in the exchanges of the terminal markets; but condemns any form of state ownership. Governor McMaster of South Dakota advises a similar policy.

*Labor Problems.* The attitude toward labor problems is somewhat the same, most of the governors contenting themselves with calling attention to the need of a liberal spirit in settling disputes and to the mutual interest of labor and capital in maintaining industrial peace. Governor Allen defends the Kansas industrial relations court and the creation of a similar tribunal is advised by the governors of a few other states.

*Miscellaneous.* There are various other topics of interest: the removal of any remaining political or legal disabilities from women; the alien land laws of the Pacific states; protests against losing control of intrastate railroad regulation; problems of highway administration. In spite of loss of power and prestige, the state is still a unit of tremendous power with vast possibilities of good or ill.

Governor Boyle in his farewell message after nine years in the governorship of Nevada, declares the experience of the country during the war has exploded the theory that governmental functions could be indefinitely expanded, that we "now enjoy a clearer vision of the true functions of the government," and that "its long arm should not reach uninvited into every conceivable phase of civic, domestic, commercial

and industrial life. Its purse should not hang on the door of the state to subsidize every conceivable form of public and private enterprise and activity."

This may be true but an examination of state projects offers little hope that taxes will be reduced. Probably the chief activity of the next decade will have to be directed toward seeing that the state gets its money's worth in goods or services. Governor Boyle proposes to enlarge on the proper functions of the state—education, administration of justice, orderly adjustment of differences among discordant elements, care of defectives, the preservation of the citizens' right to a fair field and no favor," and the meeting of the cost by just taxes "designed for revenue only and not to force political and economic reforms." Even this is a formidable program, and sooner or later there is likely to be a searching inquiry as to whether the present governmental machinery can meet the demands. Political innovations have usually resulted in this country from collapse and disorganization rather than from rational, carefully planned alteration of the national budget system is a product of war waste and direct taxation. There are likely to be some similar developments in the state which will be still more far reaching.

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**Illinois Constitutional Convention.** The Illinois constitutional convention met in Springfield on January 6, 1920. It resumed session from January 6 to July 7, 1920; and after a recess until September 21, and another from that date to November 8, it was in session from November 8 to December 9, when it again adjourned until September 6, 1921. The convention, under the terms of the Constitution of 1870, was composed of 102 members, two from each of fifty-one senatorial districts. Several members have been killed by death, and a number of others by election or appointment to other offices. When the convention reassembles on September 6, 1921, its membership will therefore be reduced by probably ten or twenty members.

The convention has agreed in committee of the whole upon a number of articles to form parts of a new constitution, although the articles agreed upon for the most part contemplate relatively slight changes from the existing constitutional provisions. Such matters have been agreed upon by the committee of the whole have in most cases passed second reading in the convention itself, and to receive final approval (after third reading) as parts of a complete constitution.

The convention has tentatively agreed upon the following matters, involving substantial departures from the constitution of 1870: (1) A number of technical changes were agreed upon which would make the process of legislation somewhat less cumbersome.

(2) The Chicago-Cook County article of the constitution was tentatively agreed upon, which would give a possibility of consolidation of numerous and complex governmental bodies within the largest city and county of the state. The proposed Chicago-Cook County article would also confer large powers of municipal home rule upon the city of Chicago.

(3) A proposed revision of the revenue article was agreed upon which would permit an income tax on income derived from intangible property, in lieu of a property tax thereon. The proposal would also permit other income taxes, under certain limitations as to progression and as to exemptions. In case a general income tax is to be levied, this proposal would permit the deduction of taxes levied by valuation from the tax levied on income derived from the same property. The revenue article as tentatively adopted would also permit additional bond issues for the purpose of financing income-producing public utilities under certain rather strict limitations, which seek to compel the utility to bear all of the interest to be paid upon such bonds and the payment of the principal at maturity.

(4) A proposed judicial article was tentatively approved in the committee of the whole which would consolidate certain courts both in Cook County and in the rest of the state, and simplify the judicial organization of the state. This proposal provides for the appointment (rather than the election) of justices of the peace within Cook County outside of the city of Chicago, and for the payment of justices of the peace by salaries rather than by fees. Justices of the peace within the city of Chicago have already been abolished under the powers conferred by the constitutional amendment of 1904 with reference to that city.

The constitutional convention was distinctly opposed to any form of the initiative and referendum, and a rather conservative proposal for the initiative and referendum submitted to it received little support. The convention was also opposed to short ballot proposals in state government, but has tentatively adopted a county government article authorizing the general assembly to provide optional, alternative laws on county government. Through such alternative systems it would be possible to authorize an optional short ballot system of

county government, to be adopted by such counties as might desire such a plan.

The subject of Cook County representation was tentatively determined upon before the recess of the convention in July, 1920, but this decision was reconsidered, and the subject came up again when the convention reassembled in November. At the November session the convention adopted a plan by which Cook County should be permanently limited to nineteen out of fifty-seven senators, and to less than one-half of the total number of representatives, irrespective of its actual population. Cook County now has nearly one-half of the total population of the state. The issue of Cook County representation is one which has led to the continuance of the convention's session from time to time, and to the recess until September, 1921. The Cook County delegates to the convention have been willing to submit to the limitation of Cook County representation in one of the two houses, but have been unwilling to submit to a permanent limitation in both houses. In July, 1920, it seemed that the convention would fall to pieces because of this issue, and a recess was then taken largely for this reason. When the convention reassembled in November, 1920, the situation was no more satisfactory than in July.

The only important issue upon which some tentative decision had not been reached in committee of the whole before the recess in December, 1920, concerned the method of making future amendments to the constitution, or a complete revision of the constitution. The convention's committee upon this subject had not reported at the time of the recess in December, 1920.

Proposals adopted by the convention in committee of the whole are referred to the convention's committee on phraseology and style for consideration and report back in revised form as individual proposals. The revised proposal then comes again to the constitutional convention, and after second reading is referred again to the committee on phraseology and style for such changes as may be necessary when each individual proposal becomes part of a complete new constitution. The committee on phraseology and style has made several reports upon matters referred to it by the convention, and several such reports were adopted by the convention before its recess in December, 1920.

It is impossible to know at the present time what the outcome of the Illinois constitutional convention may be. If upon its reassembling in September, 1921, the deadlock over Cook County representation should persist, the work of the convention is likely to end in complete

failure; and under such conditions it may be doubted whether the convention will ever submit its proposals to the people for adoption or rejection. On the other hand, if the convention should return in September, 1921, with a satisfactory agreement upon the subject of Cook County representation, it is possible that a proposed constitution may be submitted containing a number of desirable changes from the existing constitution; but not dealing as fully as it was hoped with many problems (such as that of revenue) for which the convention was primarily assembled.

**Declaratory Judgments.** A new field for judicial action in this country has been opened by recent legislation with respect to declaratory judgments. Declaratory judgments have been long used in England and have served useful and desirable purposes, but in this country the movement for such an extended use of the courts is relatively new.

The New Jersey chancery act of 1915 provides that: "Subject to rules, any person claiming a right cognizable in a court of equity, under a deed, will or other written instrument, may apply for the determination of any question of construction thereof, in so far as the same affect such right, and for a declaration of the rights of the persons interested."

Florida in 1919 passed an act similar to but broader in scope than the New Jersey legislation of 1915. Michigan and Wisconsin, also in 1919, enacted laws going much further than the legislation of New Jersey and Florida. The Michigan legislation is the broader in scope. The Michigan statute provided that:

"No action or proceeding in any court of record shall be open to objection on the ground that a merely declaratory judgment, decree or order is sought thereby, and the court may make binding declarations of rights whether any consequential relief is or could be claimed or not, including the determination, at the instance of anyone claiming to be interested under a deed, will or other written instrument, of any question of construction arising under the instrument and a declaration of the rights of the parties interested."

The Michigan statute, although brief, also provided in the broadest manner for the settlement of issues presented to the court in proceedings so authorized. The Wisconsin act of 1919 is briefer and narrower in character than that of Michigan and provides:

"Equitable actions to obtain declaratory relief may be brought and maintained in the circuit court and in matters of which the supreme

court has original jurisdiction in the supreme court, and it shall be no objection to the maintenance of such an action that no consequential relief is sought or can be granted if it appears that substantial doubt or controversy exists as to the rights or duties of parties, and that either public or private interests will be materially promoted by a declaration of the right or duty in advance of any actual or threatened invasion of right or default in duty. The judgment rendered in such an action shall bind all the parties thereto and be conclusive and final as to the rights and duties involved."

The New York Civil Practice Act, enacted in 1920, provides by section 473 that the supreme court shall have power in any action or proceeding "to declare rights and other legal relations on request for such declaration, whether or not further relief is or could be claimed, and such declaration shall have the force of a final judgment."

Early in 1921 the Kansas legislature passed a declaratory judgment statute almost identical with the Michigan act,<sup>1</sup> which was signed by the governor on February 21.

Recent American legislation regarding declaratory judgments is directly copied from England. The declaratory judgment in England dates from legislation of 1850 and 1852, but the longest step toward the common use of such judgments was taken by rule of the English Supreme Court of Judicature in 1883.

The statutes enacted in New Jersey, Florida, Michigan and Wisconsin and New York do not involve the only cases or the earliest ones in which some use has been made of declaratory judgments in this country. Illinois added to her chancery act in 1911 a provision that: "The court may hear and determine bills to construe wills, notwithstanding no trust or question of trust or other questions are involved therein." A number of proceedings authorized by statute in the several states have some of the characteristics of declaratory judgments.

One of the earliest provisions for what may perhaps be termed a declaratory judgment in this country is that involved in a New Jersey act of 1873. This act provides that within one year after an act or joint resolution has been filed with the secretary of state, if "the governor or the person administering the government shall have reason to believe that any such law or joint resolution was not duly passed by both houses of the legislature, or duly approved as required by the constitution of this state, he may, in his discretion, direct the attorney

<sup>1</sup> 19 *Michigan Law Review*, 537.



general to present a petition to the supreme court of this state, setting forth the facts and circumstances, and praying that the said law or joint resolution may be decreed to be null and void." Two or more citizens are also authorized to present a petition to the court, in the same manner as is the attorney general when directed by the governor.<sup>2</sup>

In seven states of this country, state constitutions require the highest court to give advisory opinions under certain conditions to other departments of the state government. Constitutional provisions in the seven states vary as to the conditions under which opinions may be required and as to who may ask for opinions. The theory of advisory opinions originally was that the court should to some extent serve as a legal advisor upon important questions, and that such opinions should not be controlling as judgments of the court. There has, however, been a growing tendency in the courts themselves to regard such opinions as authoritative; and to the extent that they are regarded as authoritative, they become substantially equivalent to declaratory judgments.<sup>3</sup>

The declaratory judgment is of course different from advisory opinions, as it is also from the decision of a moot issue by a court. The declaratory judgment is a final one binding on the parties, as to the issue presented. The decision of a moot case may be regarded as a dictum; while an advisory opinion is still in theory a mere legal opinion as to the law without reference to an actual dispute, having no binding effect upon future litigation. As a matter of fact, however, the advisory opinion has come to be regarded by the courts as of more or less binding determination of the law.

In the case of *Anway v. Grand Rapids Railway Company*<sup>4</sup> the supreme court of Michigan declared invalid the declaratory judgments act of that state. The majority of the court took the view that the issue presented for a declaratory judgment was a moot issue, and that the law did not provide for the exercise of what was properly a judicial function, both because of the moot character of the question presented, and because the determination by the court in making a declaratory judgment was not to be executed by the court itself. The minority

<sup>2</sup> *New Jersey Compiled Statutes* (1910), IV, p. 4973. See in re "An Act to amend an act entitled 'An Act concerning public utilities,'" 83 *New Jersey Law*, 303 (1912).

<sup>3</sup> For a full review of advisory opinions, see Ellingwood, *Departmental Co-operation in State Government*.

<sup>4</sup> 211 Mich. 592; 179 N. W. 350 (1920); 19 *Michigan Law Review*, 86.

more properly took the view that the issue to be presented under the declaratory judgment act was limited to the bona fide issue of law between parties (upon which their legal rights depended), and that a judgment thereunder when rendered would be capable of subsequent judicial enforcement, if either party acted contrary thereto. The movement for declaratory judgment, may, however, be to some extent suspended by the adverse decision in the Michigan case, although in this case the merits of the argument seem to be rather distinctly with the minority.

**Divided Legislative Sessions in Oregon.** Several years before the adoption of the divided legislative session plan by constitutional amendment in California in 1911, similar plans had been advocated in Oregon. Resolutions for constitutional amendment to put such a plan into effect failed of adoption at several later sessions of the legislature. In 1920 an amendment for the purpose, submitted to the voters through the initiative by the state taxpayers' league, was defeated at the election by a large majority.

It provided for the division of the regular biennial session of the legislature into two periods, approximately two months apart; the first, of not more than forty days, for the introduction and consideration of measures, final action being permitted only in case of governmental appropriations; the second, of not more than ten days, for final action on the tentatively approved measures continued from the first period, amendment being permitted only by a four-fifths vote of the members elected to each house. There were additional matters included in the proposed amendment, and it conflicted more or less with another submitted at the same election.

Supporters of the divided session urged that it would allow members of the legislature to "study and digest" the enormous mass of proposed legislation, in contrast with present conditions under which congestion of business and hasty and ill-considered action invariably prevail; that similar scrutiny by administrative officers would also be thus facilitated; that, best of all, through discussion by the press and by conferences of members and their constituents public opinion could thus be brought to bear upon all legislative action. "It is, in short, the taking of the people into confidence of the legislature and offering them a chance to say which bills they want passed and which they do not want passed." "In effect the plan would do much the same thing that is done by the referendum without the delay and trouble

incident to the application of the referendum," and thus reduce the necessity for resort to the referendum.

There was little active opposition to the measure. But the objection was made that congestion of business in the legislature would be increased by its adoption through the natural tendency to give tentative approval to anything submitted at the first period, since final action was reserved for the second; that the expense of legislation would be increased through double mileage and otherwise; that there was no chance for emergency measures at the second period; that the large majority required for amendments would establish a dictatorship of the small minority; that members would be busy with their private affairs during the interim and would give no time to public discussion of legislation; that if they did give up their time to such action the cost of their "campaign" would be great; that anyway the people would not avail themselves of opportunity afforded for acquaintance with proposed legislation; that "special interests" would benefit from the increased opportunities for "lobbying" with individual members of the legislature, to the detriment of the public interests.

Perhaps confusion caused by conflicting measures accounts for the defeat of the proposition as much as anything else, unless the general tendency to vote against everything at the election, good, bad, and indifferent. In fact only one of the eleven measures submitted was approved by the voters.

JAMES D. BARNETT.

*University of Oregon.*

**Compulsory Voting in Oregon.** For many years, in Oregon, as elsewhere, "the apathy of the voters," "the waning interest in elections," has been the cause of lamentation, and, as elsewhere, various remedies for this evil have been suggested. "Statesmen are groping for a plan to cure the non-voting habit, because they realize that non-voting is at the bottom of many governmental ills." Especially since 1913 some penalty for failure to vote has been urged. Something like a "compulsory voting" act was passed by the legislature in 1915, providing, as it does, that one who fails to vote at least once in two years cannot vote again without going to the trouble involved in reregistration or in "swearing in" his vote at the election. The legislature of 1919 submitted a constitutional amendment to the voters empowering the legislature to provide for both compulsory registration and compulsory voting, but the measure was defeated by a large majority at

the election of 1920. Fines or temporary disfranchisement were the penalties generally anticipated.

"Were it possible to drag everybody to the polls, no way is possible to prevent the deposit of blank ballots by those who do not wish to vote." The proposal seemed to contain "much of the ancient proposition of compulsory drinking by the horse, after leading him to the unappreciated trough." The contrary view, however, appears to be more in accord with the facts. "It is a peculiarity of humankind that duty is often shirked, but when driven to it the shirkers make good more often than not." It is so with other affairs in life. Why is it not so with the ballot? But it was contended that nothing is to be gained by driving the "shirkers" to act. Failure to vote is due to indifference as to results, and as a rule this indifference is the product of ignorance of issues. There is nothing gained by compelling men and women to help arbitrate issues of which they have no understanding. However, there is certainly at least as much reason for the opposite view. "The stay-at-homes as a rule lack neither intelligence nor morals. They are usually either indolent or thoughtless. It is not just the vicious who refuse to vote, but those who do not take their franchise rights seriously, those who permit others to run the government, and then spend their spare moments protesting because it is not run to suit them. The votes of many of these people are worth getting." To whatever extent the public may generally have been influenced by such considerations, certainly the main reason for the defeat of the proposal was the invasion of personal liberty believed to be involved. "Compulsory voting without police espionage is wholly impracticable." "Who wants to be herded to the polls by the police?" In view of current events, it is very significant that the measure was endorsed by organized labor.

Two "admirable substitutes" for compulsory voting have been advocated—decrease in the frequency of elections and in the length of the ballot. These have, however, received but little favor.

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*University of Oregon.*

## FOREIGN GOVERNMENTS AND POLITICS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

**Organization of Public Employees.** Bills defining the relation of public officials and employees to the state have recently been presented to the legislatures of Great Britain, France, and the United States. Great Britain has already enacted an important statute regulating the status of the police forces of England, Wales, and Scotland.<sup>1</sup> The general intent of the law is to establish an official police organization, known as the Police Federation; to forbid its alliance with any trade union or other body outside the police service; and to furnish opportunity to make its influence felt in matters relating to the government and conditions of service of the police force.

The organization of the Police Federation, as defined in a schedule to the act, includes all members of the several police forces below the rank of superintendent. Each local force constitutes a branch of the federation, and elects in each case three branch boards, one representing the constables, another the sergeants, and a third the inspectors. The boards number from five to seven, and may sit together as one board. In addition to the branch organization, the law provides for annual conferences in which each branch is represented by from one to four delegates, each of whom must be a member of the police force which he represents. Each of the three grades of the service represented in the federation holds its own conference, and selects from among its number a central committee of six (two selected respectively by the metropolitan police force, by the county forces, and by the borough forces). These three central committees may sit together and may be summoned to sit as a joint council by the home secretary. Finally, provision is made for holding, on the initiative of the home secretary, police councils for the consideration of general questions affecting police, at which the joint central committee or its deputation may be invited to meet representatives of the police authorities, chief officers of police, and superintendents.

<sup>1</sup> 9 and 10, George V, c. 46 (1919).

Elections to these various branches and conferences are carried out under the terms of the Ballot Act of 1872. The branch boards are limited to holding four quarterly meetings, each lasting one day, unless the consent of the chief officer of police be obtained for an additional meeting "for any special purpose." The annual meeting of the central conference is limited to not more than two days; each central committee may hold meetings once in two months, each lasting one day, but additional meetings may be held with the consent of the home secretary. Membership in the police force is a necessary qualification for election to any of these positions. Special provision is made for the organization and representation of the metropolitan police force.

The powers and functions of the federation are described in guarded language. Article 1 of the statute creates the federation "for the purpose of enabling the members of the police forces to consider and bring to the notice of the police authorities and the home secretary all the matters affecting their welfare and efficiency, other than questions of discipline and promotion affecting individuals." A draft of any regulation proposed to be made by the home secretary or the secretary for Scotland concerning the government, mutual aid, pay, allowances, pensions, clothing, expenses and conditions of service of the police forces is required to be submitted to a council consisting of the joint central committee or its deputation together with representatives of the chief officers of police and police authorities selected for the purpose by the home secretary; and before making the regulation, the secretaries must consider any representations made by the council. Any branch board may submit representations to the chief officer of police, to the police authority, or to the home secretary. The central committees are also authorized to submit representations in writing to the home secretary and in matters of importance the secretary will be prepared to give any committee or deputation a personal hearing.

Certain prohibitions form an integral part of the law. The federation and every branch must be entirely independent of, and unassociated with, any body of persons outside the public service. No member of the police force may become or remain a member of any trade union or of any other association having for its objects to control and influence the pay, pensions or conditions of service of any police force. Any person attempting to cause disaffection among the members of the police force is subject to penalties ranging up to two years imprisonment or fifty pounds fine.

Meanwhile preparations are being made for applying the principle of the Whitley council to the British civil service.<sup>2</sup> A joint committee recommended in May, 1919, the establishment of a national council of fifty-four, including four secretaries, one half to be appointed by the government, the other half to be elected by various staff associations. The national council is to be supplemented by departmental councils consisting of equal numbers of representatives of the government and the civil service, and in some cases by works or office councils. The object and functions of the national council are proposed to be "to secure the greatest measure of coöperation between the state in its capacity as employer, and the general body of civil servants in matters affecting the civil service, with a view to increased efficiency in the public service combined with the well-being of the employed; to provide machinery for dealing with grievances, and generally to bring together the experience and different points of view of representatives of the administrative, clerical, and manipulative staff." This general statement is made more specific in other sections of the report, in which are suggested *inter alia* as proper subjects for inclusion in the competence of the national council the determination of the general principles governing conditions of the service, e.g. recruitment, hours, promotions, discipline, tenure, remuneration and superannuation; provision for utilizing the ideas and experience of the staff; and encouragement of further education of civil servants and their training in higher administration and organization. It is recommended that the decisions of the council shall be arrived at by agreement between the two sides, shall be reported to the cabinet, and thereupon shall become operative.

It is proposed to give the departmental council authority to discuss any promotion or disciplinary action in regard to which it is alleged that the principles of promotion accepted by the national council have been violated.

An important bill was introduced in the French Chamber of Deputies, June 1, 1920, formulating the public relations of civil servants. A summary of the *exposé des motifs* and a brief analysis of the bill follow.<sup>3</sup> The *exposé des motifs* states as the fundamental proposition on which the bill rests that the general interests of the public service

<sup>2</sup> See Report of the National Provisional Joint Committee on the application of the Whitley report to the administrative departments of the civil service. Cmd 198, 1919. This may be found in *Good Government*, Vol. 36, 158.

<sup>3</sup> See *Revue du Droit Public et de la Science Politique en France et à l'étranger*, Vol. 37, No. 2, pp. 314-324 and references on p. 314.

determine the duties which the official must fulfill and set the limits to the rights which it is proper to grant him. Four questions are handled in the proposed legislation; the question of recruitment and promotion of officers, discipline, the organization of the service, and finally associations of the *fonctionnaires*.

With respect to recruitment, the bill undertakes to eliminate arbitrary and personal appointments by insisting on a régime of examinations and a probationary period. As for promotion, the civil servant is to be given the benefit of a *conseil d'avancement*; in matters of discipline, a disciplinary council with right of appeal in certain cases to a superior administrative council, on all of which the employee has representation. But this safeguard falls in case of concerted cessation of work. On the matter of strikes the *exposé* takes the ground that a strike of *fonctionnaires* cannot be permitted, and that the pretended analogies drawn from the relation of master and servant cannot be invoked. Public service is differentiated from private employment on the ground that there is no collaboration in making a labor contract; that the status of each office is fixed by the law and that only the representatives of the nation can regulate the situation of the office holder.

The bill recognizes the right of officials to form associations but limits the right to set up unions of associations, and reserves the right of the government to dissolve the association besides holding it to a corporate civil responsibility (*pour solidairement et civilement responsable*).

These principles are elaborated in the text of the bill, the analysis of which can best proceed by a statement of the administrative machinery set up and a description of its functions. The *projet* provides in the first instance an administrative council composed one third of *fonctionnaires* of the highest grade taken in the order of seniority; one third of representatives elected by the personnel engaged in the service; and one third appointed by the minister from without the service. The council holds office for four years. It may be consulted upon all measures "*d'ordre législatif ou réglementaire*" concerning the organization and functioning of the services, and may express wishes upon these subjects. This council sits both as a council for promotion and a council for discipline, under special rules. Every *fonctionnaire* is declared to be responsible to his superior for his official acts and in case of fault may be subjected to the following penalties: first degree, admonition; second degree, (1) removal from promotion list, (2) disciplinary transfer, (3) reduction in grade; third degree, (1) reduction in grade, (2)



placing on inactive list, (3) dismissal. Penalties of the second and third degree must be referred to the council of discipline, although the punishment is imposed by the minister after hearing the council's opinion. In case of a penalty of the third degree, a right of appeal to the superior administrative council exists.

This superior council is to consist, according to the proposed legislation, of three councillors of state, in ordinary service, chosen by the council of state; three councillors of the court of cassation, chosen by the court; three members chosen by the ensemble of the delegates of the civil servants in the administrative councils attached to the central departments; and three members taken from outside the public service by the president of the council. In addition to the function indicated above, the superior administrative council may be consulted upon all administrative or legislative measures relating to several public services, and may express wishes upon these subjects.

The French law fails to establish an official association of public employees, but admits the qualified right of employees to organize, for the study and defense of their corporate interests, and of the interests of the service to which they belong. They can pursue no political end (the precise meaning of which the bill fails to make clear). All combination with any organization outside the service is forbidden. All officials of the association and of their unions with one another must be *fonctionnaires* in active service. The associations are authorized to acquaint the heads of service and the ministers with all questions concerning the professional interests of their members; they are empowered moreover to present to the competent jurisdiction every fact or measure which appears harmful to their corporate interests, and in particular they can request the annulment by the council of state of measures concerning the profession alleged to be in excess of power or an abuse of power. Penalties ranging from 16 to 10,000 francs and imprisonment from six days to two years, together with dissolution of the association are provided for violation of the terms of the proposed law.

No *fonctionnaire* lacking a "legitimate excuse" can cease his service without having obtained the consent of his superior officer. The administrative council cannot intervene in case of concerted cessation of work to delay the imposition of penalties. Every *fonctionnaire* whose professional incompetence is ascertained can be relieved of duty after the opinion of the administrative council is had.

In the United States indications exist that similar action may soon be under active discussion. President Steward of the National Association of Federal Employees has urged the reorganization of the civil service commission, to be composed in the future of an equal number of representatives of the government, of the public, and of the civil service employees.<sup>4</sup> The congressional joint committee on reclassification of salaries proposes the establishment of a civil service advisory council to be composed of twelve members, two representatives selected by the employees, from their own number, from each of the three main groups of services (manual, clerical, and professional), one of each group being a man, and one a woman; and six representatives of the administrative staff appointed by the President, all holding office for one year.<sup>5</sup> The functions of the council suggested are to consider suggested changes in the civil service rules or regulations affecting the personnel of the service and other matters on which the advice of the council may be of assistance. The council is to have authority to offer to the civil service commission recommendations on any question coming under the jurisdiction of the commission. It is proposed to authorize the council to establish personnel committees in the departmental units and to consider personnel questions affecting more than one department in response to requests coming from the personnel committees. The joint reclassification committee urge this proposal in order to improve the morale and the efficiency of the service, and to foster the good will necessary for effective service. "The government may not properly fail to take into account the best interests and the best development of its employees who are engaged in working out its purposes and plans."

L. D. WHITE.

*University of Chicago.*

**Presidential Election in Chile.** Arturo Alessandri, whose inauguration as president of Chile took place on December 23, entered upon his five-year term as the victor in a political campaign which attracted attention beyond his own country. He is the first member of the Radical party, and the first representative of the middle class, to attain the Chilean presidency. His friends assert, too, that he is the first and only "dry" South American president.

<sup>4</sup> Annual Report, Civil Service Reform League, 1919, p. 28.

<sup>5</sup> Report of the Congressional Joint Commission on Reclassification of Salaries, House Document 686, 66 Cong., 2d sess., pp. 130-132.

There are seven political parties in Chile: Conservative, Liberal, Democratic, Nationalist, Radical, Liberal Democratic and Socialist. The Conservative party, made up of the land-owners and the aristocratic families, derives additional strength because it is the Catholic party. The Liberals, favoring moderate reforms, and the Democrats, representing the numerically small group of artisans and workingmen, have never taken an anti-clerical position. But the Radicals, in addition to an aggressive program of social and economic reform, bitterly oppose the interference of the Church in state affairs. The Nationalists consist of the personal followers of Montt, a former president, and the Liberal Democrats are the followers of Balmaceda. The Balmacedistas have, for several administrations, exercised a powerful influence in the Chilean Congress.

Alessandri was supported by the Radicals, the Democrats, most of the Liberals, and a part of the Liberal Democrats; these four groups constituting the Liberal Alliance. His opponent, Luis Barros Borgoño, a distinguished Liberal, had the support of the Unionistas, or Coalition, consisting of the Conservatives, the Nationalists, a few Liberals, and some of the Liberal Democrats. The Socialists supported neither Alessandri nor Borgoño, although in the later part of the campaign, if not earlier, their sympathies were with Alessandri, who was looked upon as the friend of the common people. Borgoño, on the other hand, had not only the support of the Church and the oligarchical groups, but the friendship of the out-going administration. The sympathies of the army, however, were said to be with Alessandri.

The Chilean constitution provides that the President shall be chosen by an electoral college whose three hundred and fifty-four members are elected by popular vote. At the election of the electors on June 25, 1920, the returns indicated a very close race, and when the electors met on July 25, the result of their balloting was 179 for Alessandri and 174 for Borgoño. This was not necessarily final, as the constitution gives the Congress power to decide on the validity of the vote. The Borgoño group brought charges of fraud and proceeded to contest the election, and the Alessandri faction feared that the influence of the administration would be used to throw the election to Borgoño. Fortunately for the political peace of Chile, it was finally agreed to submit the case to a specially constituted Court of Honor, whose decision, while having no legal status or constitutional authority, all parties agreed to accept. This Court, made up of two ex-vice-presidents, the president of the Senate, the president of the Chamber of Deputies,

and three other persons chosen by these four, decided by a vote of five to two that the vote showed 177 ballots for Alessandri and 176 for Borgono, with one vote annulled. This decision was quietly accepted by the Borgono followers, and Chile's "Hayes-Tilden" contest was at an end. The calmness with which the losers in this bitter contest accepted the decision indicates that Chile is no longer a state in which a presidential election is likely to result in open revolution.

The new president assumed office on a platform which promised a revision of the constitution of 1833, the abrogation of the parliamentary system and the return to the presidential form of government, greater autonomy for the provinces, and heavy taxes upon private wealth. The president has stated that he favors the settlement of the vexatious boundary dispute with Peru in accordance with the treaty of Ancon.

Alessandri's friends are most optimistic concerning his administration. They expect him to restore Chile's somewhat disordered finances, and to take a stand for international good-will in South America. They believe that his frequently quoted expressions, "*Pese a quien pesara, sere presidente*," (Weigh upon whom it may, I will be president), and "*El odio es esteril, solo el amor es fecundo*," (Hate is sterile, only love is fruitful), are indications of the spirit in which he will perform the duties of his office.

B. A. ARNESON.

*Ohio Wesleyan University.*

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

In order to fix the place of meeting of the American Political Science Association in 1921 with some reference to the plans of kindred organizations, the executive council has postponed a decision until early summer. The place selected will be announced in the August issue of the REVIEW. The chairman of the committee on program is Professor Charles G. Fenwick, of Bryn Mawr College.

An up-to-date typewritten list of the members of the American Political Science Association, with addresses, has been prepared. Copies may be obtained from the secretary-treasurer at one dollar each.

Since January 1 the following names have been added to the membership list of the association:

Alexander, Howard B., Delaware College, Newark, Del.  
Allen, Eleanor Wyllys, Cambridge, Mass.  
Alley, John, University of Oklahoma, Norman, Okla.  
Bailey, Warren G., Chicago, Ill.  
Barnes, Harry E., Clark University, Worcester, Mass.  
Barr, George A., Joliet, Ill.  
Baxter, James P., Colorado Springs, Col.  
Beckman, R. O., Chicago, Ill.  
Bovingdon, John, Boston, Mass.  
Bradley, Phillips, Amherst College, Amherst, Mass.  
Bradley Polytechnic Institute, Peoria, Ill.  
Brigham Young University Library, Provo, Utah.  
Bruce, Harold R., Dartmouth College, Hanover, N. H.  
Bucknell University Library, Lewisburg, Pa.  
Carneiro, Dr. Mario, Rio de Janeiro, Brazil.  
Chapman, C. C., Portland, Ore.  
Civic Library, Montreal, P. Q.  
Coleman, C. B., Allegheny College, Meadville, Pa.  
Corliss, James C., San Francisco, Cal.

- Davis, Leita, Sapulpa, Okla.  
Davis, Norman H., New York, N. Y.  
Dearborn Publishing Co., Dearborn, Mich.  
Fowler, William E., Washington, D. C.  
Green, Clarence, Butler, Ind.  
Grubbs, O. F., Pittsburg, Kan.  
Hall, Mary A., New York, N. Y.  
Harley, Professor J., University of Southern California, Los Angeles, Cal.  
Holly, William H., Chicago, Ill.  
Hubbard, Clifford C., Williamstown, Mass.  
Hume and Walker, Santiago de Chile.  
Irons, Mrs. Margaret H., Providence, R. I.  
Kerwin, Jerome G., Columbia University, New York, N. Y.  
Ketcham, Earle, University of Michigan, Ann Arbor, Mich.  
Kieffer, G. L., New York, N. Y.  
Lake Forest College Library, Lake Forest, Ill.  
Leigh, Robert D., New York, N. Y.  
Lustig, Abraham A., Washington, D. C.  
Lynch, C. Stewart, Wilmington, Del.  
Mattern, Johannes, Johns Hopkins University, Baltimore, Md.  
May, Samuel C., Dartmouth College, Hanover, N. H.  
McGuire, C. E., Washington, D. C.  
McLaren, W. W., Williams College, Williamstown, Mass.  
Miller, John H., San Francisco, Cal.  
Montague Branch of Brooklyn Public Library, Brooklyn, N. Y.  
New, Chester W., McMaster University, Toronto, Ont.  
New York Bureau of Municipal Research, New York, N. Y.  
North Dakota Agricultural College, Agricultural College, N. D.  
Ohara Institute of Social Research, Osaka, Japan  
Ostrom, Henry E., Indianapolis, Ind.  
Perkins, Clarence, University of North Dakota, Grand Forks, N. D.  
Perkins, Dexter, Rochester, N. Y.  
Randolph, Bessie C., Richmond, Va.  
Reber, Hugh J., Madison, Wis.  
Reed, Thomas H., University of California, Berkeley, Cal.  
Richardson, Lula M., Port Deposit, Md.  
Robertson, James A., Washington, D. C.  
Robinson, G. C., University of Wisconsin, Madison, Wis.  
Scully, W. R., Washington, D. C.  
Sherwell, G. A., Washington, D. C.  
Wager, Paul, George School, Pa.  
Waller, James B., Jr., Chicago, Ill.  
Westcott, Mrs. Minnie, Farmington, Iowa  
White, Howard, Urbana, Ill.  
Wilson, Lyman P., Washington, D. C.  
Winslow, Dorothy, Concord, Mass.  
Wirt, B. F., Youngstown, Ohio.

Mr. Chester Rowell, recently elected a member of the executive council of the American Political Science Association, has resigned as a member of the United States shipping board and has returned to California as a member of the state railroad commission.

Professor Raymond G. Gettell, of Amherst College, will give courses in political theory and in American government at the summer session of the University of California.

Professor Quincy Wright, of the University of Minnesota, will give courses in international law and American diplomatic history at the summer session of Columbia University.

Professor Arthur N. Holcombe, of Harvard University, is to give two courses in political science during the summer quarter at Stanford University.

Professor C. D. Allin, of the University of Minnesota, recently delivered addresses on current British politics at the University of Nebraska, the University of Colorado, and Colorado College, under the auspices of the Institute of International Education.

Professor Lindsay Rogers, of the University of Virginia, has resigned in order to accept a professorship of political science at Columbia University.

Professor Edward S. Corwin, of Princeton University, has been granted a leave of absence for the second semester and is spending the time in England.

The American City Bureau has arranged to hold a summer session for the secretaries in the fourteen western states at Stanford University during the first part of August.

In connection with his work as director of the bureau for government research at Minnesota, Professor W. M. Anderson has prepared an interesting pamphlet, entitled *Minneapolis Charter Problems*, which has been published by the Woman's Club of Minneapolis, and an outline of the government of Minnesota, which has been published by the Minnesota Republican woman's state executive committee.

Professor Edgar Dawson has resumed his courses at Hunter College after a year spent, mainly in California, in study of the problems of instruction in civics. On his way east he held conferences on this subject at a number of universities. The results of his investigations will appear in a bulletin of the United States bureau of education.

Professor George E. Howard, of the University of Nebraska, has been granted a leave of absence for the year 1921-22. He will devote himself to writing.

Professor John M. Mathews, of the University of Illinois, will give courses in political science at the University of Nebraska during the second term of the coming summer session.

Dr. William S. Carpenter, recently on the staff of the Guaranty Trust Company, has been made an instructor in politics at Princeton University.

Professor W. W. Willoughby, of the Johns Hopkins University, has been given leave of absence for the remainder of the academic year, and has gone for a six months trip to Australia, the Dutch East Indies, and Siam. He will return in time to take up his university work at the beginning of the next academic year. During his absence Baron S. A. Korff, formerly of the University of Helsingfors, will lecture in the department of political science at Johns Hopkins on parliamentary government in Europe.

Mr. Edward C. Smith, instructor in political science at Lafayette College, has accepted a position in the political science department of New York University.

Dr. Charles McCarthy, director of the Wisconsin Legislative Reference Library, and a member of the executive council of the American Political Science Association, died at Phoenix, Arizona, on March 26.

Mr. C. G. Hoag, honorary secretary of the American proportional representation league, has returned from a European tour during which he conferred with leaders of the proportional representation movement in England, Belgium, Denmark, Sweden, Germany, and other lands.



Mr. Russell Ramsey, assistant secretary of the Philadelphia bureau of municipal research, has been made secretary of the bureau, succeeding Mr. Edward T. Paxton who has resigned to take up full-time research duties on the staff. Mr. Ramsey was formerly assistant secretary of the national municipal league.

Mr. Dorsey Hyde, Jr., formerly director of the New York Municipal Reference Library, and more recently in charge of the department of economic research of the Packard Motor Company, has become assistant director of the civics department of the Chamber of Commerce of the United States at Washington, D. C.

The joint committee on administrative reorganization of the Ohio general assembly has issued a numerous series of pamphlet reports and brief surveys relating to the state administration and plans for reorganization in that state. A large number of these were the work of W. H. Allen, of the Institute for Public Service, mainly on educational institutions and problems. C. E. Rightor and G. C. Cummins each prepared a number of reports. C. B. Galbreath made a study of administrative reorganization in other states. A summary of recommendations was written by D. C. Sowers.

Mr. George E. Frazer and Mr. Walter F. Dodd, who took part in the Illinois investigation and assisted in framing the administrative code for that state, have been retained to assist in formulating an administrative code for Ohio that will incorporate the important changes recommended by the above noted surveys.

Mr. Frank Dilnot, formerly editor of the London *Globe*, and representative in America for the London *Daily Chronicle*, gave a short series of lectures at the University of Illinois during April, on the revolution in England, Lloyd-George, and Czecho-Slovakia. He has also given lectures at several other universities in the United States.

Professor Roy Malcom, of the department of political science at the University of Southern California, has accepted the position of civic director of the Los Angeles city club.

Dr. L. S. Rowe, president of the American Political Science Association, recently delivered a lecture at Georgetown University on "America as a Factor in International Relations."

Professor James W. Garner, of the University of Illinois, is delivering the James Hazen Hyde lectures at some eight or ten provincial universities in France. He has also given six lectures in the faculty of law in the University of Paris on American political ideas and institutions. Three of these lectures were repeated at the *École Libre des Sciences Politiques*; and he has delivered six lectures on international law before the new *École Internationale du Droit International* which opened at the University of Paris in January under the auspices of Messrs. Fauchille, Alvarez, and De Lapradelle. During November and December Professor Garner visited Cambridge University, England, and delivered a lecture on American foreign policy. Following the visit to England he returned to Belgium and delivered lectures on American diplomacy at the University of Brussels and at the University of Ghent.

Lectures on civil rights are being given this semester, on the Fred Morgan Kirby Foundation, at Lafayette College, as follows: first month, on ideals of government, by Mr. Herbert A. Gibbons; second month, on constitutional aspects of civil rights, by Professor Francis N. Thorpe, of the University of Pittsburgh; third month, on the historical development of the American government, by Professor J. S. Bassett, of Smith College; fourth month, on the development of civil rights and political liberty in Great Britain, by Professor Thomas F. Moran, of Purdue University.

The Norman Wait Harris lectures for 1921 were given at Northwestern University in March by Sir Arthur Steel-Maitland, formerly joint parliamentary secretary for the British foreign office and board of trade, in charge of the department of overseas trade. The subject of the six lectures was the relation of the state to industry and commerce, with special reference to foreign trade.

The Pennsylvania commission on constitutional amendment, created in 1919, has completed its work and has submitted to the legislature a carefully prepared draft of a revised constitution, containing over one hundred and thirty changes in the present instrument. It remains for the legislature to decide whether to submit to the electorate the question of calling a convention. An account of the commission's work will be found in the March issue of the *National Municipal Review*.

The twenty-fifth annual meeting of the American Academy of Political and Social Science will be held in Philadelphia on May 13-14. The general topic will be the place of the United States in a world organization for the maintenance of peace. The topics for the successive sessions are: the record of accomplishment of the existing League of Nations; the Monroe doctrine; effect of America's participation in a world organization on the doctrine; the possibility of disarmament by international agreement; the treatment of backward peoples in a world organization; the function of international courts and the means of enforcing their decisions; and the essentials of an effective world organization.

The second annual meeting of the Southwestern Political Science Association was held at Austin, Texas, March 24-26, 1921. Subjects taken up at the several sessions included state and local taxation, reorganization of state governments, land problems in the Southwest, and the relations between the United States and Mexico. Professor A. N. Holcombe, of Harvard University, gave two addresses. The officers for the ensuing year are: president, George Vaughn, Little Rock, Ark.; first vice-president, George B. Dealey, Dallas, Tex.; second vice-president, F. F. Blatchly, University of Oklahoma; third vice-president, D. Y. Thomas, University of Arkansas; secretary-treasurer, W. C. Binkley, University of Texas. Professor C. G. Haines, of the University of Texas, was re-elected managing editor of the *Quarterly*. The Association will meet in 1922 at the University of Oklahoma.

The twelfth annual meeting of the American Society of International Law was held at the Shoreham Hotel, Washington, D. C., April 27-30. The general topic for consideration was the advancement of international law, and it was taken up under four subdivisions previously assigned to sub-committees of the society's general committee on this subject. The meeting opened with an address by Hon. Elihu Root, president of the society; and papers were read by Hon. Manoel de Oliveira Lima, Mr. James Brown Scott, Professors George G. Wilson, Charles C. Hyde, Jesse E. Reeves, and others. The chairmen of the four sub-committees are: Messrs. Charles N. Gregory, Harry Pratt Judson, Simeon E. Baldwin, and Paul S. Reinsch.

The Institute for Government Research has recently added materially to its staff and has correspondingly increased the scope of its

work. It is giving special attention to the preparation of volumes to appear in its series of "Service Monographs of the United States Government," two volumes of which were issued prior to the entrance of the United States into the war. It now has in preparation monographs dealing with the following services: bureau of war risk insurance, federal board for vocational education, bureau of public health, bureau of foreign and domestic commerce, United States shipping board, and bureau of mines. These services have been selected for immediate treatment because questions are likely to arise in connection with them in the studies now being made on reorganization of the administrative branch of the government.

A detailed manuscript study on administrative reorganization has also been completed, copies of which will be furnished to the members of the joint congressional committee, the President, and others who have to concern themselves with this problem.

A large amount of work is under way on the problems of budgetary technique. Special studies are also being made on the problems of personnel administration in connection with the proposals of the recent joint congressional committee on reclassification of salaries.

The most recent publication of the Institute is a volume entitled: *Principles of Government Accounting and Reporting*, by Francis Oakey.

Continental newspapers announce the early opening in Berlin of a *Deutsche Hochschule für Politik*. The plan springs mainly from the conviction that Germany suffered before and during the war from the lack of capable and trained political leaders. In general, the *École Libre des Sciences Politiques* in Paris is to be taken as a model; and it is hoped that through its teaching and research work, and by providing a common working center for the diffusion of civic education, the school may contribute substantially to the rehabilitation of Germany. Unlike the universities, the new school is not to be a state institution preparing for definite professional careers, but rather a free higher school, open without examination to students of all ages and of every special class. Among the teachers who have been announced are ministers of state Simons, Heinze, Scholz, Koch, and Groener; ex-ministers Delbrück, A. Müller, Schiffer, David, and Wissel; Professors Delbrück, Meinecke, Hoetzsch, Troelsch, Goetz, Sombart, Beyerle, and Radbruch; and among leaders in business and public affairs, Rohrbach, Hardorff, Rathenau, Roeseler, Sernig, Gertrud Bäumer, Buhlmann, and others.

## BOOK REVIEWS

EDITED BY W. B. MUNRO

*Harvard University*

*A History of Political Theories: From Rousseau to Spencer.* By W. A. DUNNING. (New York: The Macmillan Company. 1920. Pp. x, 446.)

In the writing of a history of political theories the functions of the historian and of the political scientist are combined, and if these are mixed in proper proportion there is shown the extent to which the theories dealt with have, upon the one hand, been the product of objective political conditions, and, upon the other hand, been influential in determining the course of historical events. To be completely satisfying, then, a history of political ideas needs not only to give an analysis of the writings of political philosophers, but to show the abstract principles that have been implicit in the policies and institutions of states. Professor Dunning in his three volumes, the last of which has just appeared, has joined the qualifications of the historian to those of the political scientist, and has exhibited in an admirable manner the way in which the treatises which he has analyzed were related to each other and to the political and intellectual conditions of the times in which they were produced. He has not, however, made any considerable effort to determine the political ideas which, though implicit in political practices, did not find explicit statement in the published works of philosophers. Thus his history is, predominantly, one of political speculative writings rather than an analysis of political institutions and policies in order to ascertain the abstract principles embedded in them.

Within the four hundred and twenty pages of his text, Professor Dunning reviews the writings of between forty and fifty authors. This necessarily means that he is able to give but a very few pages to each. It also means that some writers whom many would consider not unimportant have received no, or at most only incidental, mention. The closing of the study, as stated in the preface, with the year 1880, perhaps explains why no attention is given to the writings of T. H. Green (Green's lectures on "The Nature of Political Obligation" were deliv-

ered in 1879-1880, but not published until later); but it is a little difficult to explain why no reference should have been made to FitzJames Stephen's *Liberty, Equality and Fraternity*; why William Godwin should have received a bare two pages; why jurists like Ihering and Gierke should have been passed over; and why American writers should have been given such short shrift. There are, of course, references to Jefferson, John Adams, and Calhoun, but no attempt is made to present even a summary of their political ideas. And it is interesting to note that Lieber obtains no notice at all, although Dr. Dunning is himself Lieber Professor at Columbia University.

However, these omissions are pointed to rather by way of regret than of criticism, for within the limits which Dr. Dunning has set for himself, he has done all that any one could do in the way of stating in a few, lucid sentences the substance of often complicated doctrines. Many of these summaries or characterizations are so admirable in content, and entertaining in mode of statement, that the reviewer regrets that the limits of space make it impossible to give illustrations of the literary merits of the entire volume.

The mode of presentation is a combination of the chronological with the topical: chronology governs when this is possible, but the extent to which the writings reviewed are grouped under subject headings is shown by the chapter titles: "Rousseau," "The Rise of Economic and Juristic Science," "The American and French Revolution," "The German Idealists," "Theories of Conservatism and Reaction," "The English Utilitarians," "Theories of Constitutional Government," "The Theory and Practice of Nationalism," and "Societarian Political Theory."

Rousseau alone is honored with a chapter all to himself—forty-four pages being devoted to this extraordinary man. Here Professor Dunning's literary *esprit* is so strong as to lead him, in the reviewer's judgment, to be unjust to his subject—or shall we say, victim. Paradoxes, superfluous metaphysics, fancies, follies and quibbles, resounding judgments, are some of the faults ascribed to the Genevese Frenchman. Vaughan's scholarly introduction to his edition of Rousseau's *Political Writings* is not referred to, and it is believed that if Professor Dunning had given more attention to the positions taken in that essay a somewhat juster estimate of Rousseau's theories would have been given. Professor Dunning appears at his best in his chapter dealing with nationalism. The reviewer knows of no work in which this principle is, within reasonable compass, discussed with such sanity and acumen.

. If one may again express a regret rather than a criticism it is that Professor Dunning should have restricted his concluding chapter, "The General Course of Political Thinking," to a bare fourteen pages. For we know that political literature would have been enriched if he had given us a discussion in a hundred or more pages of the general movements of political thought during the twenty-three centuries which his three volumes have covered. As it is he contents himself, if not his avid readers, with considering the question whether these centuries of speculation have led to any real advances in political theory. The two main topics which have been discussed, he says, have been the organization and institutions in which political authority has been manifested, and the rational or ethical justification of this authority. As to the first, he is of the opinion that the history of theories has shown little variation. As to the second, that the Greeks of the fourth century B. C. propounded substantially all the solutions that have been since advanced. Only the settings have been different. During the nineteenth century the effort has been to adjust the conceptions of authority and liberty so as to escape the dilemma of the anarchists. "Anarchistic individualism was preached by Sophists and Cynics; constitutionalism by Aristotle and the other conservative upholders of the *nomoi*; nationalism is but the theory of the city-state writ large; socialism has never been more completely formulated than by Plato. In twenty-three centuries the movement of thought has but swung a full circle. Such is the general lesson of the history of political theories. It is not different from the lesson of history in respect to all the other varieties of theory by which men have sought to absolve the basic problems of their earthly existence." With this judgment Professor Dunning concludes his work.

W. W. WILLOUGHBY.

*Johns Hopkins University.*

*Freedom of Speech.* By ZECHARIAH CHAFEE, Jr. (New York: Harcourt Brace and Howe. 1920. Pp. 431.)

The importance of this volume is evidenced by the controversy which has followed its publication. It deals with the way in which the law and traditions of free speech were interpreted during and after the war in the enforcement of the Espionage Act, the censorship exercised by the postmaster general and the deportation policy of the administration. The writer's exposition of the evolution of the constitutional

guarantees of free speech is wholly admirable and the book shows indefatigable industry and a remarkable breadth of historical citation.

As an authoritative work the volume suffers because it lacks the impersonal tone and occasionally betrays the temperament of a partisan—albeit one of high-minded and generous impulses. As a contemporaneous record of events, it stands by itself and is of permanent value. Written too near in point of time to the events portrayed, there is an occasional lack of accuracy due to sources of information more or less adventitious and unreliable. Many, for example, will question the statement of facts given by the author for the cases of Debs, Mrs. Stokes, Goldstein, Doe, and other conspicuous offenders against the espionage law. Lawyers will defend the Supreme Court against the author's charge that it was more tender in protection of capital in the steel trust and stock dividend cases than it was in preserving the right of free speech. Both lawyers and laymen will doubt the wisdom of the author's conclusions that the Supreme Court and most of the district courts wrongly interpreted the law of evidence applicable to questions of interest as well as the intent which animated Congress in enacting certain clauses of the Espionage Act.

The author scarcely gives sufficient importance to the cardinal fact that throughout the war we had in existence and were trying to enforce a conscription act. Whether men were prosecuted for expressing their private views, or whether they were prosecuted for actually counseling disobedience to the conscription act, can only be determined by an intensive study of all the cases tried, facilities for which are not yet available. It cannot be true that the department of justice made this act a dragnet for pacifists, because it was Attorney General Gregory's refusal to countenance indiscriminate prosecutions which resulted in the enactment of so many sweeping and fanatical sedition laws by the western states. The fact that there were only about six hundred persons convicted under the federal Espionage Act—about six in a million—scarcely supports the charge of wholesale suppression of free speech by Attorney General Gregory.

The criticism of the tyrannical censorship exercised by the postmaster general is essentially sound in principle, although here again the fundamental trouble was with the statute which conferred on that official the unreviewable power to interpret the Espionage Act according to his own standards. His strong and trenchant criticism of the deportation policies of the administration seems abundantly supported by the cases cited.



The handicaps in writing a book of this kind at the present time are due partly to the difficulty of assuming an entirely impersonal point of view, and the difficulty of obtaining full and accurate statements of fact. It is probable that the commentator of the future will attribute the acts here criticized, so far as they were wrong, not so much to the zeal and tyranny of the officials administering the law as to the war emotion and hysteria steadily growing through the country. The causes of this phenomena and the resulting complaisance with which the country at large viewed the deportation raids and the unseating of the socialist legislators, were not the result of the zeal of tyrannical officials. An inquiry into the sources of this phenomena is now a need of prime importance.

When all is said, however, the book is of great value and is serving a most useful public purpose in stimulating discussion of the always important topics of free speech.

JOHN LORD O'BRIAN.

Buffalo, N. Y.

*The Equality of States in International Law.* By EDWIN DEWITT DICKINSON. (Cambridge: Harvard University Press. 1920. Pp. xiii, 424. Harvard Studies in Jurisprudence. Vol. III.)

Any appraisal of Professor Dickinson's long-awaited work must begin with a recognition of the tremendous labor which has evidently gone into its making. Quite apart from the wide and deep research attested by the list of materials consulted, there is everywhere manifest an intellectual effort to get at the truth which contrasts strongly with some of the lighter work of the war period in political science.

This striving after final truth leads to a closeness of style and sometimes to an involved form of expression which have their disadvantages. Thus, two sentences in the preface are unintelligible at first reading, and "foundational" is used for "fundamental" at one point, with an obvious effort to be scrupulously exact in expression but with an unhappy effect on the reader's attention. All this is not very serious but deserves mention in the hope that a labored theme need not mean a labored style and manner of writing.

In the substance of the work the profession owes a debt to Professor Dickinson on several grounds. It is very worth while to have it made clear that the doctrine of state equality is derived chiefly from the philosophy of the law of nature, but only in part from that source, and

to know that the hard-headed positivists have found some ground for such a doctrine (pp. 94, 334). It is worth while to have it clearly pointed out that legal equality and political equality differ fundamentally in character and in validity both as ideals and as rules or principles of the actual law (pp. 280, 332). It is especially worth while to have it emphatically stated that progress in the science and art of international law and relations, and particularly in international organization and government, can only be made when the *de facto* inequalities of states are given *de jure* recognition (pp. 278, 333). The small states may balk and delay the march of events, but if facts are facts and men are in any degree candid they must eventually recognize that Haiti and France are entitled to widely divergent measures of political power in international government, albeit they are entitled to equal opportunity to vindicate such rights as in substance they actually possess. On these essential points what is said in these pages is not only sound but conclusive.

There are, however, one or more points on which discussion might be raised. The use made of the phrases "capacity for rights" and "legal capacity" appears to be faulty. They are used to mean, not legal capacity for acquiring rights, nor yet legal capacity for enjoying acquired rights, but capacity or measure of legal rights acquired, and it is therefore maintained that states are unequal in their capacities for rights (pp. 149, 335). That is sound enough, of course, but as here used, it is no disagreement with Carnazza Amari, whose text is cited as the clearest and most satisfactory statement of the meaning of equality in the law of nations. It also leaves one to conclude that the states are equal in the rights which they have acquired. Now in the sense that they are equal in the procedural right to enjoy such substantive rights as they have acquired this is true. But this is precisely the sense in which the concept of "legal capacity" was used by Carnazza Amari, for he speaks of the equal inviolability of states in the exercise of acquired rights (p. 108). And it is false in its suggestion that in the measure of their rights they are equal, as the author would be the first to insist.

Secondly, it does not appear that state inequalities due to constitutional limitations on state procedure are inequalities "in international law." They may have "consequences" in international politics, diplomacy, and government, and they must be "taken into account," of course, in those fields, but they are not inequalities by virtue of international law. So far as these facts are concerned it would still be possible to say that in international law all states are equal.

Finally, one might wish that the author had found room for the consideration of certain facts of economic and social history which determine legal inequalities among the states, or are influenced by them. On one hand, we might have some study of the de facto bases of political inequality among states in international representative bodies. On the other hand, it might be noted that a doctrine of equality of substantive legal rights sedulously preached tends to induce that state of de facto equality upon which alone it could be finally justified, first by denying tactical advantages to the present possessors of superior numbers, wealth, and area, and secondly by encouraging political and legal devolution within the larger states. The principle of equality between Haiti and France is based on a sort of mysticism and superstition which deals in state entities in an abstract world, and which ends by making Frenchmen and Haitians very unequal, man for man, contrary to the premises of the naturalistic philosophy from which that principle sets out. But it mitigates the de facto superiority of France as against Haiti, and it may lead to the granting of votes to French colonies in international organizations, as it has in the Postal Union, a step which is ultimately calculated to produce a greater degree of state equality in the world.

Raising these questions does not mean that Professor Dickinson has not produced a valuable work. Indeed, as he himself points out, the chief thing to be done at this stage of the study was to open up the subject and discover its difficulties. This task of analysis and preliminary study Professor Dickinson has done in a most searching and comprehensive way.

PITMAN B. POTTER.

*University of Wisconsin.*

*Treatise on International Law*, with an Introductory Essay on the Definition and Nature of the Laws of Human Conduct. By ROLAND R. FOULKE of the Philadelphia Bar. (Philadelphia: J. C. Winton Company. 1920. 2 Vols. Pp. lxxxviii, 1000.)

According to the statement of the preface "This book has been written in an attempt to clear away some of the many obscurities and misconceptions which pervade the subject of international law and which are not only discouraging to the student but irritating to the mature reader. . . . The author does not pretend to have any

more than scraped the surface, but hopes he has succeeded in a more logical arrangement than that commonly found in the writers."

As a preliminary to the treatment of the subject matter of international law the author devotes 178 pages to a socio-philosophical discussion of the definition and nature of law in general. In this discussion the author declares "the word 'state' will be used as meaning a community of men existing from within, and exerting its power by its own inherent force" (sec. 18). Later he says "A state is a community of men exerting its power as an organization by its own inherent force and not by a delegation of power from any other organization" (sec. 42). "Pirates are an organization of men having the power from nowhere but within, and, although not recognized, they bear all the marks of a state" (sec. 43), and again "They [pirates] therefore constitute a state without territory" (sec. 287). The author considers those who hold that "a body of pirates is not a state because of the fact that it is not recognized by the world and is organized for evil purposes" as in error. While this conclusion might be deduced from the definition of "state" which the author gives, it justifies grave doubt as to the validity of the definition.

The definition of international law is somewhat involved. "International law, therefore, is the conception in terms of order, of the conduct of independent states as influenced by external and internal factors, from which external factors are excluded the forces of nature and external political power, which we may call the jural conception of the conduct" (sec. 103).

Under the heading "Substantive International Law" which covers about four hundred pages there are some assertions which will scarcely be accepted; such as: "If the treaty is made purely for the event of hostilities, it may or may not be observed by the belligerent parties. This is entirely a matter in their discretion, and it frequently happens that warring powers will disregard treaties which they think are not to their advantage in carrying on hostilities" (sec. 390). While this last clause is true, this disregard of the treaty by a state does not relieve the state of its obligation. A treaty in regard to hostilities is no more "entirely a matter in their discretion" than any other treaty. The fact of the difference in remedy does not destroy the obligation to observe the treaty.

Such general statements are made as "In short, war is simply bilateral force" (sec. 602), "A unilateral act of force therefore is not war, although it may lead to war" (sec. 640). This was not the opinion

at the Second Hague Conference, and at the present time, following a declaration, there may be a condition of war in the legal sense without any act of force.

Throughout this work on international law there is, as stated by the author, an attempt to get away from the accepted method of treatment. New terms are introduced or old terms are used with new meanings. For the word "right" is generally substituted the word "power;" for the word "subject," "citizen," for "national" is substituted the word "member" and the like. Such changes may receive general sanction later, but the drift of opinion and international practice seems to be in the opposite direction.

There are some errors of statement, perhaps due to proofreading, such as that submarine cables between a belligerent and neutral country may be cut "in waters of belligerent or in the waters of the neutral or in the open sea" (p. 333, note 7) or in the title of section 981 "Neutral exporting company," when the text refers to "exporting neutral country."

The number of cases cited is comparatively few. The number of continental writers cited is also few. The citations from American and British writers are numerous. In these citations sometimes supporting and sometimes opposing the author's position there is no prejudice but an attempt to present the material fairly. The extent of these notes and citations covering many pages makes the volumes serviceable, whether or not one always agrees with the text. There is a good index and a valuable table of international persons. Probably the common arrangement of material in books of international law is not entirely satisfactory to any writer upon the subject, but he must weigh the advantages of the departure from the somewhat well beaten path of conventional method against nonconformity. The disadvantages of departure in this book seem to outweigh the advantages.

The author should receive recognition for his courage in breaking away from the conventional method of treatment of the subject of international law, because by such attempts the value of methods may be measured and what is good in the old become more secure and what is bad be superseded.

G. G. WILSON.

*Harvard University.*

*The United States and Latin America.* By JOHN HOLLADAY LATANÉ. (New York: Doubleday, Page and Company, 1920, Pp. 346,).

*Pan-Americanism—Its Beginnings.* By JOSEPH BYRNE LOCKEY. (New York: The Macmillan Company, 1920, Pp. 503.)

These are two very timely and useful books on the diplomatic relations of the United States with the Hispanic republics of America. The volume by Professor Latané is designed primarily for college classes; Mr. Lockey's monograph will interest the more advanced and technical student.

Two-thirds of the former is reprinted with alterations from an earlier work entitled *The Diplomatic Relations of the United States and Spanish America* (1900). It includes a most excellent introductory chapter on the Spanish American wars of independence, the best short account within the reviewer's knowledge, followed by chapters on the recognition of the Spanish American republics and the diplomacy of the United States with regard to Cuba, the Panama Canal, the Maximilian adventure in Mexico, and the Castro régime in Venezuela. The last three chapters which are entirely new, discuss the intervention of the United States in the Caribbean, the vicissitudes of the Pan-American idea in the nineteenth century, and the more recent developments of the Monroe Doctrine. The narrative, while not over-vivacious in style, is judical, well-balanced, and in general trustworthy. As a college textbook, in a field where good texts are lamentably few, the book will be warmly welcomed, and it should appeal to a wide circle of other readers as well.

In his preface, Mr. Lockey divides the history of Pan-Americanism into three periods: the first extending to 1830, characterized by a "tendency toward continental solidarity;" a second covering the decades to the close of the Civil War, displaying "an opposite tendency towards particularism and distrust;" and a third continuing to the present time, marked by a revival of earlier efforts toward inter-American coöperation. This volume covers only the earliest period. Its scope is conditioned by the meaning of Pan-Americanism as formulated in the opening chapter, a "moral union of American states founded upon a body of principles growing out of the common struggle for independence." These "principles" are defined as those of political independence, community of political ideals, territorial integrity, law instead of force, nonintervention, equality, and coöperation.

Interpreting his theme in the very broadest sense, the author traverses almost the entire field of American international relations, including much that the reviewer believes not strictly germane to the subject. The mode of presentation is somewhat confusing, especially for the lay reader, and in matters of emphasis the author is not always happy. The best chapters are the sixth, on Hispanic America and the Monroe Doctrine, and the three dealing with the Panama Congress. As a contribution to the history of this cherished design of Bolívar's the volume is the most complete and satisfactory that has so far appeared. The sources upon which the study is based, although confined almost entirely to printed materials, cover a wide range, and the bibliography of eighteen pages is very useful.

C. H. HARRING.

*Yale University.*

*Das österreichische Staats- und Reichsproblem. Geschichtliche Darstellung der inneren Politik der habsburgischen Monarchie von 1848 bis zum Untergang des Reiches. I Band. Der dynastische Reichsgedanke und die Entfaltung des Problems bis zur Verkündigung der Reichsverfassung von 1861. 1 Teil: Darstellung. 2 Teil: Excursus und Anmerkungen.* By JOSEF REDLICH. (Leipzig: Der neue Geist Verlag/Reinhold. 1920. Pp. 1 Teil, xvi, 816; 2 Teil, 258).

The projected work, of which the volume under review is the first, will doubtless long stand as the authoritative history of the Habsburg monarchy from 1848 until its downfall at the close of the great war. The author, whose treatises on *The Procedure of the House of Commons*, and *Local Government in England* are well known to students of English government, possesses exceptional qualifications for the task which he has undertaken. A professor in the University of Vienna and for a number of years a member of the Austrian Reichsrat, he has enjoyed a peculiarly favorable position for the study of the last phase of the history and politics of the Habsburg monarchy. For a number of years previous to the great war he was engaged upon this investigation. The revolution of 1918 threw open without limitation the archives of the old government and the author has been able to avail himself fully of their contents. We are not advised as to the number of volumes into which the work is expected to extend, but if the period subsequent to

1861 is treated as fully as that covered by the first volume it will require several. It is a truly monumental undertaking and one of very high significance to students of both history and politics.

It is indeed a tragic story which Professor Redlich has to depict, covering as it does the last phase of the dynasty which during most of the time for the last six hundred and fifty years has held the center of the stage in the drama of European politics. More than three centuries before the rise of the Romanoffs, and while the Hohenzollerns were still mere warders of the western marches, the Habsburgs, as bearers of the imperial authority, were the dominant power in Christendom. The last chapter of the history of this ancient ruling house, which substantially coincides with the reign of Franz Josef, is indeed a tragic one.

But it is not primarily the Habsburg dynasty which fixes the author's interest, but what to him is a much more fateful and portentous chapter of human history. He is concerned with the problem which during this period was, not only for the peoples of the dual monarchy, but for all Europe and indeed the world, one of the highest importance—the problem of creating a state, an empire, by the free will and voluntary union of a number of peoples in whom the sense of nationality had become strong and compelling and was continually increasing in strength. The failure to solve this problem is the tragedy which Professor Redlich portrays. The book is “an explanation of how the status of an old and great empire became extremely uncertain; how after numerous failures and many opportunities let slip, the possibility continually recurred of a real comprehension of the problem and at least of its gradual but ultimately satisfactory solution; how this great political idea came to be more and more clearly perceived both by the complex of nationalities and parties and by the ruling authorities themselves; and how after each new proof of the incapacity or the weak purpose both of rulers and ruled to grasp in its full magnitude the problem and the ideal, the doom of fate sounded its warning to both even louder and more threatening.”

The Habsburg empire was not, as so often asserted, a mere artificial piece of governmental mechanism, a political control externally imposed upon a score of nationalities, opposed to nature and having no rootage in the needs of the peoples themselves. For three hundred years and more the Danubian empire had performed the most important political services, both for its own peoples and for the general civilization of Europe. But the development of nationalism and the spread of the



ideas of constitutionalism which came in the wake of the French Revolution necessitated an adjustment which was extremely difficult to achieve. The work of absolute monarchy in the consolidation and unifying of the state had never been accomplished within the domains of the Habsburgs. Could a federalistic and constitutional state be created out of the fragments of empire and the jangling nationalities which in various forms owed allegiance to the Habsburg rulers? That was the problem. It is just because Professor Redlich believes that a solution was possible, but through the blindness and weakness of the human agents was never realized, that the history of this period assumes such tragic character.

WALTER JAMES SHEPARD.

*University of Missouri.*

*The Evolution of Parliament.* By A. F. POLLARD. (London and New York: Longmans, Green and Company. 1920. Pp. xi, 398.)

Because of this book Professor Pollard seems to anticipate the institution by medievalists of a series of actions of trespass *quare clausum fregit*. They may indeed find some omissions and a few questionable statements in matters of detail, but of the ultimate verdict of most students of English history the author may feel reasonably secure. And neither is apology necessary for the intrusion into this field of one who is "mainly versed in the history of the sixteenth century"—when he is so well versed as Professor Pollard—for there is probably no perspective of the whole *Evolution of Parliament* better than that of a detailed knowledge of the sixteenth century, a critical period in Parliament's development. It is for this very period in particular that the general theory advocated by Professor Pollard has been pronounced by a recent historian of English law to be "too medieval." This book is, therefore, the more welcome to those who agree with Professor Pollard's main thesis, just because it is the work of one of the most eminent specialists in that field; but the author may have to be prepared for some outcries of outraged historical orthodoxy.

The title is admirably chosen, for a book whose greatest strength is its continued insistence upon the growth of Parliament, as against the older and more orthodox view of its essentially static character, which has been the main obstacle to a real understanding of its working in any period. Lack of space precludes more detailed appreciation of

the author's incisive chapters on the Crown, the council, the peers, and the Commons in Parliament; his treatment of the "Myth of the Three Estates" and the "Fiction of the Peerage;" or his discussion of such more abstract questions as "Parliament and Liberty," or "Sovereignty in Parliament." The gist of Professor Pollard's thesis appears in his statement: "It was to a high court of law and justice that the taxing and representative factors of Parliament were wedded; and it was this union that gave the English Parliament its strength." Students of American institutions will possibly be interested especially in the author's treatment of the separation of powers. He is a little irritated—and not without reason—at the uncritical and absurd characterization of our own system, designed "for the prevention of evil" instead of "the production of good," as "the greatest government God ever made;" but he may be relieved to know that we ourselves are not quite all blind to these defects, and might be reminded that they are in large part a heritage from the old colonial system for which others must share our responsibility.

As indicated above, Professor Pollard's treatment suffers in some minor points from his less familiarity with the mediæval period than with the epoch of which he is an acknowledged master, and probably still more from the fact that the preoccupation of the war has deprived him of the help of some recent books, such as Pasquet's *Essai sur les Origines de la Chambre des Communes*, or even much older contributions, as Riess's *Geschichte des Wahlrechts*, or his *Ursprung des englischen Unterhauses* in Sybel's *Historische Zeitschrift* for 1888. But these will be found, not to invalidate, but rather to strengthen the general position taken by Professor Pollard in this book, which is likely to take its place as the most suggestive account yet written of the evolution of Parliament as a whole, valuable alike for the technical historian and the general reader.

For some statements that might need reconsideration or revision in a new edition, the reviewer may be permitted to refer to pages 39 and 248, where the distinction between original and judicial writs seems to be wrongly put; to page 47, where the Rolls of Parliament instead of the Statute Roll are said to begin in 1278; to the identification on pages 66 and 115 of knights and *barones minores*, which Mr. Round has recently disproved; to a similar identification on page 88 of the oath-takers at Salisbury in 1086 with the tenants in chief, which is contrary to the statement of Florence of Worcester; to the assertion on page 91 that so old a feudal custom as the *judicium parium* was "a more or less

novel" expedient in 1215; to an apparent confusion of *jus* and *lex* (terms clearly distinguished by twelfth and thirteenth century English jurists) on page 92; to the assertion of an entire absence of instructions to representatives in the middle ages on page 152; to the statements of papal supremacy on page 221, which seem a little higher than those of the medieval popes themselves though not higher than some claims of their adherents; to the author's interpretation on page 241 of the Statute of York of 1322, which to the writer seems to be much weakened if not disproved in Mr. Davies' recent *Baronial Opposition*; and to the statement, on page 292, that the Order of the Coif was "abolished," when it was merely allowed to die a natural death.

There are a few more statements of detail to which some medieval historians may possibly object as over strong or insufficiently guarded, and the peerage lawyers will not like the volume at all. But no historian could possibly write or approve of any account of Parliament with which the latter would agree; and this should not and will not prevent a hearty and general welcome of this book as a thoroughly solid and exceptionally brilliant contribution to English constitutional history.

C. H. McILWAIN.

*Harvard University.*

*English Political Parties and Leaders in the Reign of Queen Anne, 1702-1710.* By WILLIAM THOMAS MORGAN. (New Haven: Yale University Press. 1920. Pp. 427.)

This essay was accepted by Yale University as a doctoral dissertation. It was also awarded the Herbert Baxter Adams prize of the American Historical Association in 1919. It is a study of the political and economic conditions, the personages and influences of the period of Anne. The author first sets forth the social and industrial situation in England at the beginning of the eighteenth century—England's relations with the continental powers, the political ideas of the time, the early marks of cleavage between Whig and Tory, the shifting of leaders from one party to another, the influence of the commercial classes, the relation of the Church to theories of divine right and political control.

He then deals in seven or eight compact and well balanced chapters with the influence of the Churchills over Anne and gives a brief characterization of the leading men or political notables of the era—Marl-

borough, Godolphin, Harley, St. John, Sir Edward Seymour, Lord Somers and others. No period in British history presents another such "picture of corruption, venality, unconstitutional influences, court intrigues, unbounded ambition, court favorites." These features of the period are vividly depicted.

The personal influence of the Queen as the last of the Stuarts, her policies and her relations to the Parliament and to parties, the conduct of elections, the game of the politicians, the struggle on conformity and the protestant succession, the struggle with Louis XIV, the part the Queen played as a peacemaker in the conflicts between the Lords and the Commons, her insistence upon ministers who would do her bidding, all these are brought into interesting and clear review.

A chapter is given to the election of 1705, and another to the political influence of the Marlboroughs and Godolphin. The essay also traces the steps in the Anglo-Scottish Union, and for this praise is given chiefly to the Queen.

Professor Morgan shows the result of painstaking and studious research into the sources, the correspondence, letters, and documents of the time. The essay is a very instructive, if not exhaustive study of a notable period in English history—a period of transition from personal to responsible ministerial government. The essay shows that it was not so much at the "Glorious Revolution of 1688" as at the Hanoverian succession following Anne that ministerial government took the place of the royal prerogative in controlling the policy of the state. Anne governed largely by her friends, as George III did. She sought a non-party government and expected her will to control the votes and policies of her ministers. Harley is shown to be the first of the modern leaders of organized and disciplined parties, commanding the support of the Queen on the one hand and the majority of the Commons on the other, at the same time keeping in touch with the currents of public opinion, through men like Defoe.

There is a valuable chapter at the close of the volume summing up the significance of Anne's reign, in which the reader is reminded that under the last of the Stuarts occurred the greatest of English foreign wars up to that time, the union with Scotland, the famous victories of Marlborough, the establishment of the succession, the decline of the power of the Crown over Parliament, and the development of party organization. One by one the favorites who sought to control Anne and her policies were cast aside; all who offended her had cause for repentance. The Duchess of Marlborough, after all, was not so much the power behind the throne as she has been supposed to be.

Professor Morgan's volume is that of a painstaking investigator. He has produced a scholarly and very readable volume which enlightens the reader upon the period of which it treats. The English style is clear and forcible. The author's citations to his authorities and his bibliography are evidence of the industry and extent of his research. The essay will receive, in addition to the award of a notable prize, the recognition of historical scholars in England and America.

JAMES A. WOODBURN.

*Indiana University.*

*A History of the Chartist Movement.* By JULIUS WEST. With an introductory Memoir by J. C. SQUIRE. (Boston and New York: Houghton Mifflin Company. 1920. Pp. xii, 316.)

Julius West died in 1918, and his book was published in 1920. There is plenty of internal evidence that it was written some time before his death, and that he was unconscious, while he was writing, that there were three Americans busy on aspects of the same movement. He makes no allusion to *The Chartist Movement* by Frank F. Rosenblatt, *The Decline of the Chartist Movement* by Preston Slosson, or *Chartism and the Churches* by Harold Underwood Faulkner. It is a curious coincidence that five young men—three in the United States and two in England—should have been engaged at the same time in digging up the history of a movement that had been largely neglected by English speaking historians. Both the Englishmen are dead, for Mr. Hovell did not long survive Mr. West; but the service rendered by them survives, and the work of Julius West especially has resulted in weaving the Chartist movement into the political and social life of Great Britain and making it an integral part of the developments both of the nineteenth and twentieth centuries.

It is a curious fact that Chartism has been considered as a movement apart from the rest of English life—a movement with a definite beginning and a definite ending. Mr. West, young as he was, realized that history does not supply us with definite eras, and that there are no beginnings or endings to its fabric. The history that he gives is concise, clearly arranged and characterized by a careful attention to chronological order as well as to the influence of the individual leaders of the movement. Mr. West evidently spared no pains in searching out old newspaper files, and he made ample use of the great storehouse of material accumulated by Francis Place. He familiarized himself not

only with the 93 volumes of Place manuscripts at the British Museum, but also with the 180 volumes, chiefly consisting of press cuttings, owned by the British Museum and stored at the Hendon Annexe. These volumes were carefully collected by Place and cover the earlier years of the movement. But the great value of Mr. West's work lies not so much in its completeness and accuracy, valuable as are these characteristics, as in the fact that he indicates not only the many threads that were drawn together to produce Chartism, but also shows how these threads—separating and diverging, but always continuing—ran into the later movements of British life—into coöperation, into movements for popular education, and into the labor movement which attained such importance during the war. He shows that the Chartist movement was no bubble, blown into momentary impressiveness and then disappearing in nothingness, but rather one wave of an onward coming tide, which ebbed, but was succeeded by other waves using the same water and urged on by the same impetus, which are still advancing, and show no sign of turning back.

A. G. PORRITT.

*Hartford, Conn.*

*The English Reform Bill of 1867.* By JOSEPH H. PARK.  
(New York. Columbia University. 1920. Pp. 285.)

Among the lines of investigation carried on during many years past under the direction of the faculty of political science in Columbia University not the least interesting and important has been that relating to the development of England during the nineteenth century—which now "belongs to the ages," and consequently to the historian. To that varied and admirable series of studies on the Chartist movement which appeared some three or four years ago, is now added a history of the Reform Bill of 1867, and the promise of a similar account of franchise reform since 1885. For such work the student of modern English politics cannot be too grateful, for it would seem that English scholars have been too largely content to regard little or nothing of any consequence since 1832.

The present volume, after an introductory chapter on the Great Reform Bill, its defects and developments and the growth of the reform movement until its culmination in the sixties, both in England and on the continent, proceeds to its main theme, which is prefaced by a discussion of the condition of the working classes and the popular and official attitude toward parliamentary reform. Thenceforth the story

revolves, naturally, around Disraeli. And there is no one interested in either English history or in parliamentary government, or in the great magician, who will not find his clear, fair account, both scholarly and entertaining. For Mr. Park has one quality which is, unfortunately, rare in young doctors of philosophy—he can write—almost always—as well as he can investigate.

Naturally he is more or less limited in his material. The completion of Money Penny and Buckle's *Life of Disraeli* fortunately came before the publication of his study, and he owes something to its illuminating pages. For the rest he relies upon published material, as one must for such a work, and he has carefully combed the periodicals. Perhaps in writing such history as this we shall always be confined to such sources; though it is just conceivable that there exist letters and memoranda which will throw more light on the question which concerns him much—the real motives of the prime minister in putting forward such a measure at such a time—whether from a real sense of its justice as well as its expediency, whether to dish the Whigs or to help the workingman. That question Mr. Park answers as well as it can be answered in the present state of our knowledge—perhaps as well as it can ever be answered. Yet that question, though it is the most interesting part of the volume, is not the most important contribution which he makes. That contribution lies in the long study of the circumstances which preceded and in some measure compelled the passage of the bill. There he has gathered together a mass of information which, however unsatisfactory in certain particulars, as the author himself is well aware, gives us a better basis of fact for our judgment of mid-nineteenth century England and its politics than we have had before.

Only in one respect would the present reviewer suggest a slight modification of Mr. Park's conclusions as to the results of the bill of 1867, the Tory attitude, and the probable position of Disraeli with regard to the social legislation of the twentieth century. Apart from the great minister's recognition of the fact that it was good if not indeed necessary politics, it is apparent that the Tory attitude, as represented by Disraeli, differed radically from the Liberal attitude as represented by Mr. Gladstone. And that difference, among others, gives Mr. Disraeli a different place in the history of such legislation from that occupied by Mr. Gladstone, irrespective of the quality and character of the two men. They are not in the same political dimension.

W. C. ABBOTT.

*Harvard University.*

*Political Systems in Transition. War-Time and After.* By CHARLES G. FENWICK. (New York: The Century Company, 1920. Pp. xix, 322. The Century New World Series.)

This volume is divided into four parts. Part I comprises a brief outline (44 pages) of the constitutional systems of the United States, Great Britain, France, the German Empire and Russia at the opening of the World War. Part II (65 pages) outlines the changes brought about by the war in the political institutions of the principal European countries. Part III (115 pages) sets forth the "constitutional unpreparedness" of the United States at the beginning of the war and the uncertain scope of the war powers of Congress and the Executive. This is followed by an analysis of the emergency legislation enacted by Congress, including fair statements of opposing views upon each important measure. Proposed and actual changes in the national administration are presented in a similar manner. Another chapter gives a résumé of the new legislative and administrative activities of the state governments during the period of the war. Attention is concentrated upon the legal and political aspects of war administration rather than upon its numerous details which have been covered more fully in Willoughby's *Governmental Organization in War Time*.

In Part IV the author discusses (1) the post bellum effects of the appeal to democratic ideals during the war, especially in relation to the duties and obligations of citizenship and the demands for industrial democracy; (2) the chief political problems raised by the war, notably centralization versus decentralization, and the extension of the functions of both state and national governments; and (3) the effect of the war upon the international relations of the United States, and especially the conditions which are essential to the success of any international organization to maintain peace. Parts III and IV are the most valuable portions of the book.

A judicial spirit, a detached point of view, evidence of thorough study and mastery of materials, and a clear, vigorous and attractive style characterize the volume throughout. It should strongly appeal not only to the general reader but also to undergraduates in government courses to whom the book will prove both highly informing and unusually interesting as collateral reading.

P. ORMAN RAY.

*Northwestern University.*



## BRIEFER NOTICES

Lord Bryce's new work on *Modern Democracies*, which has come from the press too late for an adequate review in this issue, is published by the Macmillan Company. The material contained in the two volumes divides itself into three parts. The first, covering 162 pages, relates to the general principles of democratic government. It includes chapters upon such topics as "Democracy and Education," "Democracy and Religion," and "The Press in a Democracy." The second division of the work, covering a much greater portion of it, is allotted to a study of present-day democracies in their actual workings. The countries chosen are France, Switzerland, the United States and some of the British self-governing colonies. The concluding chapters, fifteen of them, set forth the author's observations and reflections upon the past, present and future of democratic government. Lord Bryce's volumes will be of great interest to students of political science everywhere. A comprehensive review of the work will appear in the next issue of this periodical.

Messrs. Charles Scribner's Sons have published a *Life of Joseph Hodges Choate* (2 vols., pp. 471, 439) by E. S. Martin, the widely-known New York journalist. As a constitutional jurist of great prominence as well as an ambassador to the court of St. James, Mr. Choate found himself placed very close to things of high public importance and his letters contain a great deal of interesting comment. He was a prolific correspondent and for that reason has become a large contributor to his own biography. Mr. Choate's writings, public and private, make up by far the larger part of the two volumes. They afford a remarkably good delineation of the way in which a great lawyer and man of affairs looked upon the various aspects of American life during the decades immediately before and after the turn of the century.

The same publishers have also issued Royal Cortissoz's *Life of Whitelaw Reid* (2 vols., pp. 424, 472). Apart from the fact that Choate and Reid were both New Yorkers and served as ambassadors to Great Britain, their careers, interests and points of view were not at all alike. Whitelaw Reid's journalistic impulses carried his interests over a wider area, and there was scarcely any great event in the world's history from the nomination of Lincoln to the death of Edward VII on which Mr. Reid's biographer does not find data for a chapter. These volumes make an appeal to the general reason by virtue of their cosmopolitan-

ism; they likewise contain a good deal of material which is of permanent value to the student of diplomacy, public affairs, and particularly to the future historian of American journalism. Mr. Reid was fortunate in his career and he is fortunate also in his biographer. Mr. Cortissoz has done his work extremely well.

Under the auspices of the Institute for International Affairs the Oxford University Press has published *A History of the Peace Conference of Paris* (3 vols., pp. 517, 488, 457), edited by H. W. V. Temperley. The first two volumes contain a series of chapters upon the war, the German Revolution, the armistice and the work of the Peace Conference by sixteen writers, most of them associated with Oxford and Cambridge. The third volume contains chronologies, notes and documents, among the latter being a translation of the new German constitution. The contributed articles are of unequal value, but taken as a whole they give a fair portrayal of the various problems as Englishmen were disposed to see them. The volume of documents is particularly useful.

Mr. Lansing's account of the on-goings in Paris is contained in a volume on *The Peace Negotiations—A Personal Narrative* (pp. 328) which was published during the latter part of March by the Houghton Mifflin Company. There was a general expectation that Mr. Lansing, in this recital, would venture to tell the world some things that it did not know before; but the volume contains little more than a reiteration of what close observers had already recorded, or, at least, strongly suspected. The extracts from Mr. Lansing's own journal and the copies of memoranda which he prepared during the negotiations are of considerable value. These deal particularly with the general plan for a league of nations and show the way in which the ultimate provisions of the covenant were evolved. The President's original draft and Lord Robert Cecil's plan are included side by side in the appendices. Chapters are devoted to the system of mandates, the proposed treaty of guaranty with France, the Shantung settlement and the Bullitt affair.

Another American contribution to our knowledge of the Paris negotiations is Bernard M. Baruch's *Making of the Reparation and Economic Sections of the Treaty* (pp. 353) published by Messrs. Harper and Brothers. The author was prominent among the "economic advisers" of the American delegation, and as a member of the economic drafting

committee took an active part in the work of the conference. His aim in this volume is to indicate the American attitude towards the economic and reparation clauses, to show how far this attitude governed the outcome, and to answer the question whether American interests were adequately protected during these negotiations. More than half the book is given over to a reprint of the economic and reparation clauses as finally embodied in the treaty.

The *Collected Legal Papers* of Mr. Justice Holmes of the United States Supreme Court have been published by Messrs. Harcourt, Brace and Howe (pp. 316). Although the author speaks of these papers as "little fragments of my fleece that I have left upon the hedges of life," their value is by no means inconsequential nor will their appeal be solely to students of constitutional jurisprudence. The volume includes all the writer's legal addresses and papers during a period of nearly forty years, beginning with his article on "Early English Equity" which appeared in 1880 and finishing with a brief deliverance on the conception of "Natural Law" written in 1918. Between the two are essays on Bracton, Montesquieu and Marshall, addresses on a variety of legal topics and opinions on matters more or less closely related to the administration of the law. It has always been the habit of Mr. Justice Holmes to think unconventionally and to write pungently. The reader will find very few dull pages in this book.

That the "lost cause" still retains its staunch adherents is demonstrated by the recent publication of Bunford Samuel's *Secession and Constitutional Liberty* (Neale Publishing Company, 2 vols., pp. 403, 435). The author's aim, as indicated upon his title page, is to show that a nation has a right to secede from a compact of federation and "that such right is necessary to constitutional liberty." To this end he begins with a statement of the doctrine of secession as set forth by the Confederate authorities when they asked recognition from France in 1862. With this as a starting point he proceeds to demonstrate from the Declaration of Independence, the Articles of Confederation and the records of the Constitutional Convention that the states which came into the union became parties to a compact quite unlike an ordinary contract between individuals. The compact among the states, Mr. Samuel contends, was analogous to a treaty among nations, in that "a breach of any one article, by any one party, leaves all the other parties at liberty to consider the whole convention as dissolved" (p. 80).

This argument is reinforced by an appeal to the writings of Madison and others. There is a chapter on "The Ethical Question Involved." All this makes up, however, a small portion (about one-eighth) of the two volumes. The rest of the work is given over to documentary appendices and it is these that give the book such value as it may have.

A volume which deserves attention because of its rather unusual point of view is Alfred B. Cruikshank's *Popular Misgovernment in the United States* (pp. 455) published by Messrs. Moffat, Yard and Company. The author, who is a retired New York lawyer, endeavors to prove that most of the world's political ills have come from the widening of the suffrage and from looking upon the right to vote as a "natural right." The origin of manhood suffrage he finds in the Terrorist administration of Revolutionary France, whence it made its way across the seas and eventually unseated the American tradition of a property qualification. The safeguard of a property qualification, he contends, was discarded by a generation of Americans who failed to realize its value. Among other things "directly chargeable to manhood suffrage" the author includes the Civil War. While extreme positions are assumed in several chapters of the book there are nevertheless some fairly good discussions of various topics more or less closely allied to the suffrage question. The author earnestly advocates the re-establishment of a property qualification as the only adequate safeguard against corruption and communism.

*The State and Government* (D. Appleton and Company, pp. 409) by Professor James Q. Dealey, is announced as "an introduction to political science from the sociological point of view." It is not a description of American government alone, nor indeed of any one form of government, but rather of those essentials which are characteristic of all governmental systems. The book begins with a survey of the relations which exist between government and other social institutions and then proceeds to outline the development of governmental mechanism. This is followed by an analysis of present-day governmental organization and functions with additional chapters on political parties, the rights and obligations of citizens, national politics, and the growth of democracy. As an epitome of political science the book is well-balanced and accurately written. It forms a logical supplement to the author's earlier volume on *The Development of the State*. A well-selected bibliography is appended.

The two concluding volumes of *Debates in the Constitutional Convention* of Massachusetts have come from the press (Vols. III and IV, pp. 1352, 555). The convention's *Journal* (pp. 970) now completes the publications of this body, its proceedings having run to seven large volumes, to wit, a journal, four volumes of debates, and two of bulletins. These publications, either as a set or individually, may be had at a nominal price from the State Library of Massachusetts.

The Neale Publishing Company is sponsor for a volume on *The Relation of the Judiciary to the Constitution* by William M. Meigs (pp. 248). The author argues that "the judiciary was plainly pointed out by our history for the vast function it has exercised, and that it was expected and intended, both by the Federal Convention and by the publicists of the day, to exercise that function."

Messrs. Longmans, Green and Company are bringing out a third edition of Oppenheim's *International Law*, edited by Ronald F. Roxburgh, and the first volume of the new edition is now on sale (799 pp.). This initial volume deals with the law of nations in time of peace. It represents an extensive and thorough revision of Oppenheim's earlier work.

*Safeguards of Liberty* by W. B. Swaney (Oxford University Press, pp. 210) presents in compact form the progress of civil liberty as shown in English and American charters, in the writings of statesmen, and in various other documents. The book is made up in the main of excerpts from these sources with comments thereon by the author.

The Century Company has recently published a volume on *French Foreign Policy, 1898-1914* (pp. 392) by Graham H. Stuart of the University of Wisconsin. The author has endeavored to give a fair account of French foreign policy from the time of the Fashoda incident to the eve of the World War. An introductory chapter explains the general international situation as it existed in 1898; successive chapters deal with French diplomacy as respects questions at issue in Africa and the Orient. Such topics as the formation of the Entente, the fall of Delcassé, and the Moroccan embroglio receive particular attention. The author's work is based upon authoritative materials, but his book is not a mere welding together of extracts from official documents. The

narrative is coherent, clear and well-written. No one can write intelligibly of French diplomacy without giving his readers a glimpse into the chancelleries of other European nations. Dr. Stuart's book is, therefore, to a considerable extent a general treatise on the golden age of secret covenants secretly arrived at. The pawns shifted quickly on the chessboard of international politics during these sixteen years and this book of nearly four hundred pages affords its author no excess of space for describing the various moves. Dr. Stuart has lost no opportunity to make his theme interesting to the American reader.

Two volumes of memoirs by Russian diplomats throw some light upon the attitude of that country towards various European questions during the years preceding the war. M. Nekludoff's *Diplomatic Reminiscences* (E. P. Dutton and Company, pp. 541) covers the years 1911-1917 and deals in an illuminating way with the tangled problems of the Balkan states. Those who desire to get a clear understanding of Russia's attitude toward the first and second Balkan wars will find this volume extremely helpful. Alexander Iswolksy's posthumous memoirs which have been issued under the title: *Recollections of a Foreign Minister* (Doubleday, Page and Company, pp. 303) reveal the origins of the Triple Entente and contain, among other things, a striking chapter on the secret treaty of Bjorkoe. The author seems to have been thoroughly master of his facts and well this may be, for he was Russian Minister of Foreign Affairs from 1906 to 1910 and ambassador in Paris from the latter date until the Russian revolution. His chapter on Count Serge Witte is a very skillful delineation of a statesman whom the world never adequately understood. The entire volume is liberal in attitude, temperate in tone and extremely readable.

A vigorous defense of representative government is embodied in Alleyne Ireland's *Democracy and the Human Equation* (E. P. Dutton and Company, pp. 251). The publishers are doubtless warranted in introducing the author to his prospective readers as a man who has "spent his life investigating and studying systems of government in various parts of the globe," but the farther assertion that "he is certainly the greatest authority on the subject in any English-speaking country" will hardly command universal assent. Be this as it may, the title of Mr. Ireland's book gives a clue to its main line of argument which is that government, being created and managed by human beings, is dominated in every phase by the human equation—not an altogether

novel thesis by any means. The author is particularly concerned with the "flank-attack" which is now being made upon the principles of representative government by the initiative, referendum and recall. He believes that the growing complexity of governmental tasks demands the better training of all administrative officials. Mr. Ireland argues cogently and writes well. He has a considerable grasp of political literature and has inserted an unusual number of quotations in his text. His discussion, however, is at times aggressively partisan and betrays a rather scant tolerance for diverging opinions.

The Lawyers Coöperative Publishing Company has issued a volume on *The Constitutional Law of the Philippine Islands* (pp. xxiii, 702), by George A. Malcolm, associate justice of the supreme court and professor of public law in the University of the Philippines. Part I deals with general principles, written constitutions, and the interpretation of constitutions. Part II gives brief accounts of the constitutions of England, the United States, Australia, Cuba, Mexico, Japan and the Malolos constitution for the Philippines. The remaining three parts are devoted to the main subject of the volume. A number of documents are published as appendices, including the Jones Law and the Malolos constitution.

Hilaire Belloc has launched bravely into political controversy with a book on *The House of Commons and Monarchy* (George Allen and Unwin, pp. 188). The thesis of the book is as follows: England, as an aristocratic state, built up a system of parliamentary government; but the aristocratic character of the English state has now broken down and the parliamentary system is fast disintegrating with it. The House of Commons cannot be reformed, either from within or from without, so it will presently cease to function. Of dogmatism there is quite enough and to spare in the book, but the author's grasp of parliamentary history, on which he at times relies to prove his point, is not impressive.

Sir Henry Lucy, whose facile and veracious pen contributed to the pages of *Punch* for many years under the pseudonym of "Toby, M.P." has published some of his reminiscences in *The Diary of a Journalist* (E. P. Dutton and Company, pp. 340). Readers who are familiar with Sir Henry's *Sixty Years in the Wilderness* need only be told that the present volume is of equal or even greater merit in the cleverness with which it illumines the bypaths of English parliamentary history.

*The Days Before Yesterday* (Hodder and Stoughton, pp. 342) by Lord Frederic Hamilton contains the engaging chronicles of one whose official duties took him to the capitals of many countries. The volume deals with matters of no great account in themselves but the author's skill as a *raconteur* atones for whatever may be lacking in the importance of his theme. Out of his random reminiscences Lord Frederic has managed to make a most entertaining and on the whole a rather instructive book.

The publishers of *The Taint in Politics* (Dodd, Mead and Company, pp. 258) vouchsafe us no farther information than that the book is "by a well-known English author." It is a study of machine politics in England during the past couple of centuries with special emphasis upon the period since Parliament was "reformed." Books of this sort are not scarce in the literature of American politics but one is rather surprised to learn that "the machine" has been functioning so effectively overseas. If the anonymous writer is as credulous, however, about things in his own country as he seems to be about political chicanery and wrongdoing in America (see pp. 140 ff.) his readers should be given a word of caution.

*Studies in Statecraft* by Sir Geoffrey Butler (Cambridge: The University Press, pp. 138) contains five essays on various subjects, chiefly biographical and for the most part in the sixteenth century. Among these essays particular mention may be made of those on "William Postel," "World Peace through World Power" and "Sully and his Grand Design."

Messrs. E. P. Dutton and Company have brought out a little volume on *Principles of Freedom* (pp. 244) by the late Terence MacSwiney. The book deals with such varied topics as "Moral Force," "Militarism," and "Intellectual Freedom."

Jean-Jacques Rousseau's two essays on *L'État de Guerre* and *Projet de Paix Perpetuelle* have been reprinted in English by Messrs. G. P. Putnam's Sons (pp. lv, 90). The introduction and notes are by Professor Shirley G. Patterson of Dartmouth College.

Professor Robert M. Haig has edited a series of lectures delivered at Columbia University in December, 1920, on the *Federal Income Tax*



published under that title by the Columbia University Press. Professor Seligman, in his introduction to this volume, claims that the addresses contained therein constitute the most signal attempt that has yet been made in any country to elucidate the basic principles of importance to the framer, the administrator, and the payer of the modern income tax. This claim seems to be justified. The addresses go to the heart of the income tax problem; their authors are experts of the highest authority in the treatment of their several subjects; and the treatment itself is, as a whole, well-informed and keenly critical. There is no more useful book for the political scientist or economist who wishes to investigate the theory or practice of modern income taxation.

*Great American Issues* (pp. 274) by John Hays Hammond and Jeremiah W. Jenks is the title of a work recently published by Messrs. Charles Scribner's Sons. The book takes up, one by one, the various political and economic problems which are bulking largest in the discussions of today—such matters, for example, as unemployment, immigration, the tariff and the problems of foreign exchange. In each case the problem is defined and the main difficulties of the way of its solution are set forth. The latter part of the book deals with various proposals for getting out of our present difficulties. The book is discriminating in its selection of topics, the material is well-arranged and the method of presentation is good.

Among the flood of books relating to this subject the modest volume on *The Problem of Americanization* (Macmillan Company, pp. 246) by Peter Roberts deserves special mention. It is a plain and terse statement of what Americanization means and how we can best hope to get results from it. There are useful chapters on such topics as "Teaching English," "Naturalization," "Recreational Activities" and "The Approach to the Foreign Born." The purpose of the book is to aid men and women who are now devoting their energies to Americanization work and to such it will undoubtedly prove useful.

The latest addition to the Debaters' Handbook Series, published by the H. W. Wilson Company, is a third volume on *National Defense* (pp. 279) edited by Julia E. Johnsen. It contains articles and references on army organization, the cost of the war, military service, disarmament, etc., making a very serviceable compilation on a subject of present-day interest.

The Oxford University Press has brought out the first volume of a work on *Historical Jurisprudence* by Sir Paul Vinogradoff (pp. 428). This initial volume contains the author's introduction to the subject (an essay of 162 pages) and a series of chapters on "Tribal Law." The introduction includes a discussion of the relation between law and political theory. A second volume on *The Jurisprudence of the Greek City* will appear shortly. It is the author's intention to proceed with further installments of his study but no announcement of the exact scope of these later volumes has yet been made.

An extremely serviceable volume on *Europe 1789-1920* by Professor E. R. Turner of the University of Michigan has come from the press of Messrs. Doubleday, Page and Company (pp. 687). The strong features of this book, as they will be viewed by students of political science, are its clear outline of governmental development in the various European countries, its scrupulously fair attitude, its readable style and its excellent maps. The bibliographies at the close of each chapter are admirable.

Walter Geer's *Napoleon the Third* (Brentano's, pp. 348) is a very handsomely printed volume the contents of which are aptly indicated by its subtitle "The Romance of an Emperor." While the book adds nothing to what is already known about the political happenings of the Third Empire, it presents the Emperor's side of the case rather effectively and still leaves the reader with the impression that the author is endeavoring to be impartial.

*The New World Order* by F. C. Hicks (Doubleday, Page and Company, pp. 406) deals with the League of Nations as a functioning part of the world's political mechanism. The author tries to show the league's possible relationships. The book is conservatively written and on the whole lets the facts speak for themselves. Many useful documents are included in the appendices.

With an almost identical title *The New World* by Frank Comerford (D. Appleton and Company, pp. 364) is a book dealing with a wholly different theme. Mr. Comerford's volume is devoted chiefly to the subject of Bolshevism in its various phases. A chapter on "Bolshevism in the United States" is included.

The Princeton University Press has published Professor Harold M. Vinacke's *Modern Constitutional Development in China* (pp. 280). The book deals with its subject from the inception of reform in 1898 down to the present time.

*The Press and Politics in Japan* by Kisaturō Kawabé has been issued from the University of Chicago Press (pp. 190). The author's purpose is to show the considerable part played by the Japanese press in the political development of his country.

A booklet on *Conservative Democracy* by Paul Kester, dealing chiefly with the contrast between democracy and socialism, has been printed by the Bobbs-Merrill Company (pp. 82).

The Macmillan Company has added to its lists of elementary texts a new *Community Civics* (pp. 387) by Edgar W. Ames and Arvie Eldred.

A new edition of F. A. Magruder's text book for schools has been issued under the title *American Government in 1921* (Allyn and Bacon, pp. 460 and index).

*The Jew and American Ideals* by John Spargo is published by Messrs. Harper and Brothers (pp. 148). The book is not a defense of the Jew but a plea for adherence to American ideals in the face of anti-Semitic propaganda. Particular attention is given to the alleged relationship between the Jews and the Socialists.

Under the title *College and Commonwealth* (pp. 420) the Century Company has published a series of addresses and papers by President John A. MacCracken of Lafayette College. These addresses deal chiefly with education, but with education in the larger sense, including its relation to government, to industry and to American ideals.

The Society for Promoting Christian Knowledge has issued, as one of its recent publications, a small volume on *Life in a Mediaeval City* by Edwin Benson (pp. 84). It is a study of political, social and economic life in York during the fifteenth century.

## RECENT PUBLICATIONS OF POLITICAL INTEREST

### BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

#### AMERICAN GOVERNMENT AND PUBLIC LAW

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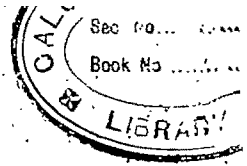
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## THE EDUCATIONAL FUNCTION OF THE NATIONAL GOVERNMENT

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Education is admittedly a comprehensive and vague term. It may be used to imply all the training which life affords to any individual member of human society. In a narrower and customary sense it has reference to requirements more or less technical which a community makes of its younger members. Whether viewed in its larger or in its narrower meaning it amounts to a process through which the individual progresses toward a more or less useful place in society.

In the phrase "educational function" is included a large group of federal activities which tend directly or indirectly to influence popular intelligence and accordingly help in the establishment of public policy and law. Such activities frequently underlie legal development in one or another direction. They account occasionally for the creation of new laws.

Well educated as were most of the framers of the Constitution, it is a notable fact that in the long course of their debates in the Convention of 1787 they gave slight attention to the subject of education. In a few minds of that epoch there was a dim ideal of the probable future necessity of instructing the democracy. But public schools at the time were unsystematized and undeveloped. Research in its modern meaning of scientific investigation,

carried little if any significance. The Constitution, begotten out of a past distinctly fearful of majority rule, was silent on the subject of education, and from that day to this we have been made very familiar with the argument that education should not be considered a matter of concern to the national government.

Lawyers seem to be agreed that such authority as Congress may assume over education must find its warrant in the "general welfare" clause, and that it rests upon these two principles of interpretation: (1) educational undertakings authorized by the Constitution must be calculated to result in benefits fairly diffused; and (2) such undertakings must be only those not within the power or the capacity of the states, of the local authorities, or of private individuals. "The primary responsibility for educational control," remarked commissioner of education Dr. Elmer E. Brown, in 1910, "rests with the several states." Commissioner Philander P. Claxton reiterated the same sentiment in his first annual report of the next year. Education, we are persistently told, should be allowed to remain a function of the states; otherwise, the national government will encroach upon the states to such an extent that little in education will be left for the states to do.

It will be convenient in the first place to reflect briefly upon a few activities of the national government before the Civil War which may be termed educational. Rather more detailed consideration may be given to the increase of such activities during the past sixty years, from 1860 to 1920.

## I

The years from 1789 to 1860 constitute essentially the formative period of our national development. The Civil War resulted in the establishment of a unified nation. Although in this formative period the educational function of the government was not generally recognized, it revealed itself in a variety of ways—in activities and modes incidental to normal political and, in particular, to administrative development. That this was at that time the direct result of popular pressure I cannot discover. Furthermore there is no clear indication that Congress was to any

degree conscious of any pronounced or definite duties in the matter of caring for popular education. That was the concern of the various states. Generally speaking, the function developed in neither a logical nor a consistent fashion: it was exercised by a process of indirection.

The establishment in 1802 of a national military and engineering academy at West Point, and the choice in 1845 by the secretary of the navy (George Bancroft) of Annapolis as the seat of the naval academy, may be passed over with a bare comment: these two institutions founded by the national government were directly in accord with the nation's duty to provide adequate educational facilities for men destined to be prepared to protect the country in case of need on land and sea. Less obvious assertions of phases of the national educational function—destined in the course of years to be highly significant—can be associated with the years 1790, 1807, 1842 and 1846, respectively. I refer to certain provisions in law which account for the beginnings of the census, the patent-office organization, the coast and geodetic survey, the naval observatory, and the Smithsonian Institution. From these various beginnings there arose establishments related in different ways to administration. Several of the resulting organizations were destined rather than designed to afford encouragement to scientific research, and all of them were useful in the solution of problems national in their importance.

In the year 1790 were enacted the first national laws relating to the census and to the proper protection of patents—the latter subject based upon the admitted power of Congress "to promote the progress of science and useful arts." As organizations developed for the purpose of carrying out these laws, such organizations came for the most part at the start under the general supervision of the department of state. At a later time the census passed to the supervision of the department of the interior, and is today lodged in the department of commerce, while the patent office went in 1849 into the department of the interior, where it has ever since remained.

The census of 1790 was a bare enumeration of the population on the basis of which to regulate certain civil and political rights

of the states. Its extraordinary growth over many decades could have been foreseen by no mortal eye. Its possibilities, indeed, for scientific purposes were only slowly developed, until the statistical genius of General Francis A. Walker, applied to the ninth and tenth censuses in 1870 and 1880 respectively, revealed the national census as capable of becoming one of the scientific wonders of the world. As early as 1810 it took some account of manufactures; next, in 1820, attention was given to agriculture and to non-naturalized foreigners; and in 1840 many facts bearing on popular intelligence—notably on schools of high and low grades—came into the nation's vision through the census returns. Today, with a permanent census organization first established by the law of March 6, 1902, and devised, for greater efficiency and consistency to hold over from decade to decade, the census has expanded into a periodical inventory of national resources, or—as Dr. S. N. D. North has remarked—into “the barometer of national development in every phase and branch—in human beings first, for the quality and character of its citizenship must always remain the most important national asset.”

The patent office rose from small beginnings in 1790 to the status of an organized corps of experts qualified to pass upon the utility of thousands of inventions. To say that the patent office has not been the means of aiding education is to overlook its bearing on the progress of scientific and practical research from an early date. Taken in hand at the outset by three cabinet officers, a comparatively slender organization developed chiefly under the auspices of the department of state down to 1849, when by law it was transferred to the department of the interior. Here it has since functioned. Its vital formation really was revealed after 1802, the year in which Dr. William Thornton was assigned to the duty of supervising its growing functions. Thornton was a man highly trained for scientific pursuits in his day, having been a student at Edinburgh, London, and Paris. He bore the title of superintendent by courtesy, a title which was fixed in law after his death by a statute of April, 1830. Six years later, in July, 1836, the present office of commissioner of patents was established.

Henry L. Ellsworth of Connecticut, first commissioner, was the second remarkable figure in the organization. Soon after 1836 he raised the bureau to a place of importance to the intelligent farmers of the entire country, for a large proportion of patents in those days involved improvements in implements of agriculture and in processes for tilling the soil. From what John Quincy Adams termed "a mere gim-crack shop" the bureau, largely through Ellsworth's ability, attained to the position of a useful public establishment. "The Patent Office," remarked a writer in 1846, "is now regarded as the general head and representative of the useful arts and the industrial interests of the country." From it gradually there was developed the later department of agriculture of 1862.

The coast and geodetic survey, today a well-known bureau in the department of commerce, goes back for its origin to the year 1807 and the influence in scientific directions of Thomas Jefferson. It was instituted primarily for the convenience of commerce and somewhat incidentally for the protection of life and the national defence. Its steady development in the widening of our knowledge of coast boundaries and waterways—particularly with respect to the Great Lakes and Alaskan waters—has made it of great significance as revealing in practical ways the educational function of the national government. No less significant in the long run, but within the realm nearer pure science, was the founding in Washington in 1842 of the naval observatory. Aided at the time of its origin by the clear vision and persistent legislative effort of John Quincy Adams, it came into being as a result of the expanding needs of the navy depot of charts and instruments. It quickly developed functions that were directed toward determining the positions of the sun, the moon, the planets, and the stars; its experts tested chronometers and helped to standardize time over the country; and very recently it has had much to do with promoting our knowledge of the new science of aeronautics. Such names as Matthew F. Maury and Simon Newcomb attest sufficiently well the bearings of the work of the naval observatory upon scientific discovery.

When in 1846 Congress provided for the permanent organization of the Smithsonian Institution—the outcome of a large

bequest to the government from the English chemist, James Smithson—it entered upon a design “for the increase and diffusion of knowledge among men.” The scientific work of the institution, supported since its origin in large part by national appropriations, has been world-wide in its educational influence. Its publications constitute a monument not merely to its founder, but to such men in Congress as have from time to time aided in its support. They are today to be found in all well-equipped libraries.

Another matter within this period, which throws light on the relations of the national government to a limited number of the states in respect to education, should not be overlooked, the policy of land grants first authorized by Congress in 1802, when Ohio was admitted into the Union. Although the policy was somewhat accidental in origin, it reflected an ideal as to the proper disposition of parts of the public domain which can be traced directly to the Ordinance of 1787. Briefly stated, it was a plan authorizing the reservation of the sixteenth section in every township for the support of the common schools, and of two townships of land for the purpose of endowing in the state a higher institution of learning. It had no application to any of the sixteen older states admitted prior to 1802, but the plan was thereafter taken advantage of by all the incoming states. No restrictions were placed upon the states in the matter. Indeed, no provision was made by the national government for any sort of adequate administrative machinery. The expenditure of funds derived from the sale of reserved lands was left to the disposition of the states, unsafeguarded by proper restrictions. Although somewhat casual in its origin and based upon an ill-defined ideal, the policy has been frequently referred to in later years as a precedent for one sort of national aid to education—that derived from the sale of the public lands.

## II

Scientific research under government auspices chiefly for the solution of problems of an administrative and political sort, it will be seen, had been well established by 1860. Almost unwittingly a phase of the educational activity of the national govern-

ment has brought results in a variety of directions. Already proved to be essential to progress, such activity was to increase enormously in the years ahead, until today one is safe in asserting that the national government is maintaining research throughout the country to an extent not equaled elsewhere by any two governments. Millions of money are thus annually expended. Without this record our existence as in many respects the country of largest prosperity among civilized nations could not be explained, for the test of a nation's greatness lies not so much in its resources as in the proper or scientific utilization of them.

By 1860, popular education, on the other hand, had drifted—usually ahead, it is true—but with results varying in accordance with state regulations and laws. From a low ebb of efficiency in 1820, Horace Mann by his genius as a thinker and organizer of popular education had built up the Massachusetts school system. He was a figure large enough in caliber to have succeeded John Quincy Adams in 1848 in the national House of Representatives; and at a later time, carrying his ideals into the Middle West, he came to be considered widely as quite the most alert-minded and influential force on popular education in the country. Dying in 1859, he left behind a younger disciple in the person of Henry Barnard of Connecticut. Today Horace Mann, Henry Barnard, and William Torrey Harris can easily be ranked together as having done yeoman service in the work of establishing the widespread American conviction of the incontestable value to a democracy of popular education.

Although the entire nation was rapidly awakening by 1860 to the necessity of unification in the school systems of the different states—a point of view then appreciated by many individuals and actively promoted by means of much organized effort—the educational function of the national government had not been directly involved in aid of popular education with a view toward the solution of some of its perplexing problems. Its educational function had been exercised heretofore in modes limited by, or incidental to, the growth of administration. To many intelligent citizens in 1860 it seemed high time that this function should be extended in scope, deepened, and brought into direct relation to the state systems of public instruction and schools.

## III

As we look from 1860 to the present time—across the disorders of a civil war pregnant with domestic consequences, across the following fifty years of comparative internal quiet (a period characterized by amazing industrial prosperity and by social advancement in so many ways), and onward over a second term of national strain and confusion complicated by foreign conditions during which as never before the intellectual and material resources of the whole nation were drawn upon—we may discover at least three conspicuous measures of national consequence which bear directly on our theme. These three measures, to some extent the mature expression of circumstances and tendencies not easy to trace, were all brought about by intelligently directed popular pressure. They are the so-called Morrill acts of 1862 and 1890, the act establishing in 1867 the bureau of education in the interior department, and the law of February 23, 1917, which brought into existence the federal board for vocational education.

These three measures mark what may be termed the high points in legislation illustrative of the process whereby the educational function of the general government has been extended and intensified during the past sixty years. The two Morrill acts should be considered together, for the second act was merely the amplification of a principle established by the first act of 1862. The first act applied to the states, while the second involved the territories and accordingly resulted in a measure in educational history applicable throughout the country. In line with the two Morrill acts are numerous other measures, such as the so-called Hatch Act of 1887, the Nelson amendment of 1907, and the Smith-Towner Act of 1914. These were all concerned, directly or indirectly, with colleges chiefly designed to promote agriculture and the mechanic arts—in brief, with institutions devoted to higher education. When the federal board for vocational education was established in 1917, the educational function of the government was enlarged to the point of seeking to give aid in secondary education. The rather anomalous position occupied by the bureau of education since 1867 will be considered near the close of this paper.



## IV

The first Morrill Act of July 2, 1862, came into effect after many years of effort on the part of farmers grouped into local or national organizations largely for the purpose of obtaining from the national government aid for educational and other enterprises deemed essential to rural welfare. It followed by some six weeks the law which established the department of agriculture—a law approved by President Lincoln on May 15, 1862. It was to apply to the states alone so soon as the various states accepted within time limits its provisions.

For every senator and representative apportioned to the several states in accordance with the figures of the census of 1860 the act granted 30,000 acres of public land. Land thus acquired could be sold, and the money derived from the sales was to be devoted to the establishment or expansion of colleges in all the states which accepted the terms of the act. State colleges supported by these means were to be designed especially to promote all branches of learning relating to agriculture and the mechanic arts. In the curriculum there was to be included a course in military tactics. No portion of the funds could be applied to the purchase, erection, or repair of buildings. The act was not of universal application, for it did not apply to the territories. The secretary of the interior was, it may be observed, the single national administrative official mentioned in the text of the act.

While the act expressly left to the several state legislatures the right to prescribe courses of study outside the range of those concerned with agricultural science and practical pursuits, it appeared to involve the national government in educational matters in a somewhat directive fashion. Certainly it was a notably clear expression in national law of a revulsion in popular feeling against traditional or classical modes of training in higher institutions of learning. Its object was to encourage state effort in the direction of practical studies. In fact it marks the early phase of a tendency characterized today as vocational education.

The agricultural college movement developed slowly. It quickened markedly so soon as agricultural experiment stations were established, for these stations supplied trained experts

and many excellent teachers. The second Morrill Act increased the annual endowments to colleges through a succession of years, prescribed somewhat more definitely the nature of the studies and enlarged the scope of the original act's provisions by extending them to the territories. Thus, through national legislation, the movement became of universal significance. By 1890 three administrative officials were in one way or another involved in the cause—the secretary of the interior, the secretary of agriculture, and the secretary of the treasury.

## V

The Vocational Education Act of 1917 was the outcome of tendencies that go back into the past for more than a generation. It went into effect shortly before the United States entered into the world war, but it was in no sense a war measure. In various ways it reflected sporadic efforts on the part of the states quite as far back as the eighties to obtain government aid for popular or secondary education. It developed directly out of the work of a presidential commission appointed in 1913 to devise a plan through which, by means of a gradual increase of national aid in the shape of money appropriations, all the states might be assisted in developing and maintaining systems of schools designed to encourage young students in equipping themselves for practical pursuits in agriculture, trade, commerce, and home economics. The commission printed a report in 1914. With the details of the act of 1917—a long and carefully drafted measure—we need not concern ourselves. Its larger features should be noted.

1. The act creates an administrative board known as the federal board for vocational education. This board is composed of three heads of departments (the secretaries of agriculture, of commerce, and of labor), the commissioner of education, and three citizens chosen by the President who are known to be experts in regard to problems in the three respective fields of agriculture, manufactures, and labor—seven members in all who are bound to see that the provisions of the law are carried out.

2. The act provides for the appropriation of national funds annually over a series of years, such funds to be progressively increased by arbitrary amounts until 1926, after which they are to be indefinitely continued at a fixed figure. The appropriations thus established by the organic act are to be distributed to the states in accordance with a certain ratio for the purpose of stimulating vocational education throughout the Union. However, the act is so formulated that only on condition that the states themselves make appropriations can national funds go to them. In brief, the law was designed to allocate national aid in proportion to local aid.

3. The federal board works through the state boards which—for the proper administration of the act—all the states agreed to create. This feature necessarily enforces a degree of consistency in secondary school administrative machinery that has been heretofore unknown.

4. The act is based upon the usual and rather recent definition of vocational education as that form of education which has for its "controlling purpose" the giving to persons over fourteen years of age secondary grade training definitely designed to increase their efficiency in a variety of useful employments of a non-professional kind—such employments as are associated with trade, agriculture, commerce and commercial pursuits, and callings requiring a knowledge of home economics. It marks the mode by which the national government has been induced, at least for a period, to make its educational function to some extent potent within the field of secondary education. The appropriations are now being used in coöperation with all the states to train teachers, supervisors, and directors of vocational subjects; to the paying of salaries; and in other ways that are concerned with this reconstructive and extensive educational scheme. Inevitably the federal vocational board is brought into close touch, through the various state boards, with many vital aspects of the vocational phase of the educational situation throughout the land.

How far the vocational educational plan here briefly outlined will be successful remains a problem for the future to decide.

But two conclusions appear obvious: the plan has brought the national government into a position of dominance in which it is likely to exercise directive control—something far beyond mere influence or guidance in the realm of popular education; and it has at length raised the head of the bureau of education outside and above the narrow and rather barren range of the small statistical office first established in 1867.

## VI

The movement for a national bureau or department of education can be easily traced from 1849, the year in which the department of the interior was established. But quite twenty years before that there were to be found a few scattered suggestions regarding the desirability of some such organized office that might look after the educational needs of the country. After 1849, the movement was merely an aspect of the awakening of a people conscious of grave local and general educational defects—defects that were especially conspicuous in the southern and the newer western states. According to the returns of the census, illiteracy by 1860 was increasing rapidly. After the Civil War, in 1867, Congress was persuaded, somewhat reluctantly, to make provision for a department or—as it was promptly altered in title—a bureau of education. It was lodged in the department of the interior where it has ever since occupied a humble place.

The objects of the bureau were these: the collection and study of materials bearing on the conditions and progress of education; the diffusion of information thus acquired; and the promotion "otherwise" of the cause of education. The bureau was placed in the charge of a commissioner whose term of service was left undefined. From that day to this annual appropriations for this bureau, although gradually increasing, have been notoriously small.

Such influence as the bureau of education has exerted on popular education has depended upon the varying abilities of six commissioners enforced by insignificantly small groups of specialists in education. Besides upwards of fifty annual reports

from the six successive commissioners, the bureau has assembled since 1867 a mass of more or less informative lore and educational statistics in the shape of reports, bulletins, and studies. Nevertheless, the outstanding impression left upon one willing to examine the printed results of its work is this: the bureau of education has been chiefly a static rather than a dynamic organization. One must ask whether it has been a center of vital importance to the teaching profession—a profession today represented by about 700,000 members whose chief business it is to aid in the work of training more than 22,000,000 American boys and girls? Has it been vitally related to other government organizations which for generations have been promoting scientific research? The agricultural college movement—essentially a phase of higher education—was started and took shape before the bureau of education was established. It is true that at a later stage the commissioner of education was charged with the administration of the endowment fund for the support of colleges of agriculture and the mechanic arts, and with the supervision of education in Alaska. Moreover, very recently he has gained a modicum of recognition in the administration of secondary vocational education as a member of the federal vocational board.

Anyone who will today read over the six annual reports of the late secretary of the interior, Mr. Franklin K. Lane, which cover the years 1913 to 1919—commentaries on Mr. Lane's interest in the broad field of popular education—must conclude that Mr. Lane was puzzled to account for the rather anomalous administrative position occupied by the bureau of education as at present constituted. Impressed by the fact that this bureau is lacking in the equipment necessary to accomplish any great work for the schools, the teachers, and the children of the country, Mr. Lane was inclined to wonder if the bureau of education should not be abolished. There is in the course of his thought no comfort for those who wish to see established a national department of education in charge of a cabinet officer. While he developed nothing in the nature of a large or constructive plan, he laid stress upon what he termed a bureau of educational

methods and standards in which would be gathered the ripe fruit of all educational experiments upon which the schools of the country might draw—a sort of national clearing-house in educational affairs. Perhaps his most striking conclusion, however, amounted to the formulation of a theory of the place of the national government in education—a theory which, whether ultimately accepted or not, marks a comparatively recent and advanced stage of thought. Like so many of us, Mr. Lane was shocked by the figures given out by the surgeon general of the army early in 1918—that of 1,552,256 men between the ages of twenty-one and thirty-one examined for entrance to the army, 386,196 of these, coming from twenty-eight camps, were unable to read, understand newspapers, or write letters home. He said:

“What argument that could be advanced could be more persuasive that education deserves and must have the consideration of the central government? Make the same kind of an offer to the states for the education of their illiterates that we make to them for the construction of roads and in five years there would be few, if any, who could not read and write. . . . If once we realize that education is not solely a state matter but a national concern, the way is open. . . .”

## VII

We have reached a new stage in administrative development which—so far as education is concerned—is characterized by a widespread desire to broaden, deepen, and intensify the educational function of the general government. We have passed from the conception of the use of national funds for indefinite educational purposes to purposes carefully defined and set forth in substantive law. But the past is still full of significance if we are to advance in the proper way into the hidden future. There should be on the part of legislators a clearer understanding of just what the general government has thus far accomplished in the way of encouraging research. Care should be shown in the further creation of machinery by means of which the educational function of the national government, broadly conceived

and today enormously significant, may be more intimately related to the states. Citizens should be led to realize that popular education, important as it is in a democracy, is but a phase in the complicated processes making for national enlightenment. To a large extent progress in enlightenment no doubt depends upon intelligent and well-trained schoolmasters and schoolmistresses. It springs, however, from innumerable sources, many of which are often ignored by so-called educational experts. Not infrequently it comes from tiny efforts on the part of individual experimenters and thinkers; it is molded and shaped by group efforts in government, state university, and privately endowed laboratories devoted to study and research; it depends for its vitality upon our great museums and libraries scattered throughout the country. Can such educational activities ever be confined to the limits of any executive department that could conceivably be organized?

The old theory that education should be largely the concern of the various states cannot be overlooked. In principle it would appear still to be sound, for it will restrain the general government from going too far in the direction of the policy of beneficent despotism. It will act by way of restraint and hold the national government to a middle course—that of lending aid in a critical epoch, and of withdrawing such aid so soon as the states themselves shall have proved themselves able to care for local educational defects and weaknesses.

## PENSIONS FOR PUBLIC EMPLOYEES

MILTON CONOVER

During 1918-20 twenty-four states enacted some form of pension legislation for public officials and employees. Congress established a retirement system for civil service employees. Various Canadian provinces, several British colonial governments, and a few European states legislated in favor of civil pensions.

In the United States this recent activity is the culmination of a half century of agitation, experimentation and controversy in the matter of civil pensions, whether national, state, county or municipal. Private pensions in various American industries have doubtless favorably influenced the development of government pensions.

This development has resulted in the use of many conflicting definitions of the term "pension." Due to some aversion to that word, many confusing substitute terms have been used such as: retirement system, vocational insurance, deferred pay, indefinite leave of absence, retiring salary, graduated bonus, gratuity, annuity, superannuation allowance, service relief, old age assurance, provident fund, actuarial equivalent, and public officers' guarantee fund. As used in this article the term civil pension is intended to imply a regular allowance granted to a person for that person's maintenance or the maintenance of one or more persons dependent on the pensioner, that allowance being usually paid in consideration of the pensioner's meritorious services to the grantee; but it may be granted as a deferred wage or salary, as an annuity or as a form of regularly paid charity without reference to any consideration of gratuity, of wages, or of deferred dividends. It is a stated payment made by a civil government to an employee, to a former employee, or to a subject of that government without a corresponding immediate service.



*Civil Pension Commissions.* In order to study the problem of a sound pension system, six states have recently created commissions. New York City has made a searching investigation of her pension system. The first report was made in 1913. This showed that the pension funds for the police, firemen, and teachers were bankrupt. They totaled a deficit of \$154,500,000. In 1916 the deficit was \$202,775,568.<sup>1</sup> During 1916-18, the mayor's commission on pensions made a report in three parts, giving a descriptive analysis of New York's nine pension plans.<sup>2</sup> This report emphasized the "condition of inequality in pension powers and extravagance of pension policies," which had resulted from haphazard and ill-considered legislation which put into operation those systems and concluded that "the most ineffective and expensive way of dealing with superannuated and incapacitated employees is to place dependence on enforced reductions and dismissals of the incapacitated, on the basis of efficiency ratings or for other causes, rather than on the basis of a sound pension system."<sup>3</sup> Consequently the subsequent 1918 pension report of the same commission proposed a new retirement system, entrance into which would be compulsory on future employees of the city. It is improbable that a more scientific system of civil service retirement had ever been devised in America. The actuarial basis for the financial structure of the new plan was outlined in detail by professional actuaries. A retirement plan was proposed "to cover all entrants into the municipal service with pensions for optional participation by present employees of the City of New York."

These reports published by the New York commission analyzed the pension systems of the city, indicated the inequalities in the various groups of employees, furnished computations of rates of contributions to be made by the employees, and outlined the principles upon which a new pension system should be constructed.

In 1919, the New York legislature created a state pension commission of seven members. They reported on March 30,

<sup>1</sup> Report of the Pension Funds of the City of New York, pt. 3, p. 11.

<sup>2</sup> *Ibid.*, pt. 2, p. 3.

<sup>3</sup> *Ibid.*, p. 1.

1920, and proposed a plan which was partially applied in the acts of the 1920 legislature. Like the New York City commission, they concluded that "to attain the highest level of efficiency, the governmental service of the state requires a system for the retirement of superannuated and disabled employees."<sup>4</sup> The commission outlined principles which they believed should be followed in all pension legislation, advocated "contributions by the government payable at the time when the service is rendered on account of which the retirement benefits will be payable," and insisted that there be created no new pension systems "calling for public support where definite calculations are not available as to the costs involved and where proper provision to cover the liabilities as they accrue is not made."<sup>5</sup>

Two of the most important reports yet made in this country are those of the Illinois pension laws commissions, created in 1915 and 1917. The first commission made a detailed report in 1917, analyzing the experience within the state, and indicating that a number of the pension funds were insolvent.<sup>6</sup> The commission made certain concrete recommendations, but was unable to complete all the investigations thought necessary, or to draft its recommendations in the form of proposed legislation. For this reason a second commission was created, and upon it were appointed three of the four members of the previous commission. The same actuarial staff served both commissions. The second commission reported in 1919, and submitted proposed legislation for the development of a pension policy as to all systems existing in the state or its municipalities. Such improvements as have been made in Illinois pension legislation are primarily the result of the investigations of these two commissions.

New Jersey created a pension and retirement fund commission in 1918 to investigate the problem of state and local pensions.<sup>7</sup> This commission consisted of five members of the legislature and was assisted by the New Jersey Bureau of State Research. Six-

<sup>4</sup> Report of the New York Commission on Pensions (1920).

<sup>5</sup> *Ibid.*

<sup>6</sup> See *American Political Science Review*, Vol. 12, p. 267.

<sup>7</sup> New Jersey, Joint Resolution No. 3. (1918).

teen bulletins showing the need of a state pension system have been published, and a proposed scheme drafted. Governor Edge recommended in 1918 the standardization and coördination of existing systems and insisted on absolute solvency.

The Pennsylvania commission on old age pensions reported in March, 1919. It gave a thorough diagnosis of indigency in the state and an analytic description of old age pension methods in foreign countries but did not recommend much that is immediately constructive.

Wisconsin provided in 1919 for the organization of a pension laws commission in every city of the first class to investigate the operation of pension laws in such a city and of similar laws in other states and countries.<sup>8</sup>

The Milwaukee commission reported on November 15, 1920, with a proposal for four funds: policemen's, firemen's, teachers', and general municipal employees' annuity, and benefit funds; each to be managed by its own board of trustees and supervised by a commission of three members appointed by the manager. The funds were proposed to be supplied by a deduction of three per cent from the employees' salaries, and a public contribution of from six per cent to nine per cent of the amount of the salary of the employee. The commission recommended that a pension system should be established on a reserve basis, that specified funds to be appropriated each year be calculated by an actuary and the money be raised by direct taxation, that the costs be divided between the government and participants, and that the contribution of the employee be made on a percentage basis of his salary.<sup>9</sup>

The most recent state pension report was made in January 1921; by the Massachusetts legislature joint special committee on pensions. This committee was authorized "to consider the entire questions of pensions and retirement allowances provided under existing law for officials and employees of the Commonwealth and of the counties, cities, and towns."<sup>10</sup> The committee re-

<sup>8</sup> Wisconsin Acts (1919), ch. 514.

<sup>9</sup> Report of the Milwaukee Pension Laws Commission (1920).

<sup>10</sup> Report of the Massachusetts Legislative Joint Special Committee on Pensions (1921), p. 9.

ported that on August 1, 1920, there were in Massachusetts 2950 pensioners at an annual cost of \$1,535,647.32. This included all state and local pensioners.<sup>11</sup> They declared that the present pension laws "are lacking in system, and present the most glaring inequalities." Some employees are wholly without pensions. Others have pensions but contribute nothing. Some contribute one-half the real cost of their pensions. Some are compelled to retire, others are not. The age of retirement and the necessary length of service to qualify for a pension varies in the various branches of the civil service. Much special legislation is enacted for such employees as scrub women, laborers, police matrons, chauffeurs, certain electricians, signalmen, janitors, clerks and widows of employees. "This special legislation is generally passed, not on recommendation of the employing department in case of state employees or on recommendation of the governing body of the employing county, city, town, or district in the case of municipal employees, but at the solicitation and on the *ex parte* statements of the persons who will be benefited. By the frequent and indiscriminate passage of these special laws, a tempting invitation is held out to all to seek special favors by legislation. Furthermore, the passage of these special laws is productive of grave inequalities and discriminations, and consequent discontent."<sup>12</sup> The morale is thereby lowered.

The committee agreed that the contributions to a pension system should be on "the actuarial reserve plan" rather than on the cash disbursement plan. They endorsed the conclusion of Paul Studensky that "systems of the cash disbursement type are almost invariably unsound,"<sup>13</sup> and approved the declaration of Lewis Meriam that "Under the actuarial reserve plan the taxpayers who receive the service pay all the obligation incurred by the government in respect to that service, whereas under the assessment or cash disbursement plan the taxpayers at the time the service is rendered pay the immediate wage only, and leave for

<sup>11</sup> Report of the Massachusetts Legislative Joint Special Committee on Pensions (1921), p. 9.

<sup>12</sup> *Ibid.*, p. 51.

<sup>13</sup> Studensky, *Teachers' Pension Systems in the United States*, p. 136.

some future taxpayer "the payment of the prospective benefits which have accrued in respect to that service."<sup>14</sup>

The Massachusetts commission declared that "the liabilities which accrue for services rendered after a pension law goes into effect should be provided for by a reserve fund, so that the burden will be substantially equalized, and will be borne by the taxpayers who receive the benefit of the service on which the pensions are based,"<sup>15</sup> and that "all future pension laws should be based on the contributory plan."<sup>16</sup>

Upon the principles of this report, the Massachusetts committee drafted four proposed acts "to more nearly equalize the annual contribution to be made by the Commonwealth to the retirement system for teachers" and state employees. It is proposed to determine, at the time that the annual budget is under consideration, the exact amount needed for pensions. This will be determined by "basing the appropriations on the retirements of the previous year." In this way the system may continue solvent.

Some of the principles involved in these reports had already been operative in previous legislation in other states, the greater part of which deals with municipal pensions.

*Pensions for Municipal Employees.* Five states have recently authorized pension systems for city employees. Such authorization is usually to take effect upon its acceptance by the governing officials of the municipalities or by a majority of the voters at a special election. The pension funds are usually administered by a board of trustees consisting of certain city officials or by a special commissioner who has the authority to appoint subordinate administrators, actuaries, and physicians. Approximately the average age of pension retirement is sixty years, the average necessary period of service is twenty years, and the pension is generally equal to one-half of the pensioner's salary at the time of retirement.

<sup>14</sup> Meriam, *Principles governing the Retirement of Public Employees*, pp. 325-326.

<sup>15</sup> Report of the Massachusetts Legislative Joint Special Committee on Pensions (1921), p. 43.

<sup>16</sup> *Ibid.*, p. 46.

Minnesota and New York adopted the most comprehensively organized plans in 1919. One of the Minnesota systems benefits the employees in the classified service of departments of health in cities of fifty thousand population which operate under a home rule charter.

The sources of the Minnesota pension funds are specifically indicated: "First, dues of its members and from the gifts of real estate or personal property rents, or money or other sources; second, an amount or sum equal to one-twentieth of one mill shall be annually assessed, levied and collected by the proper officers of such city where a health relief association exists, upon each dollar of taxable property in such city as appears on the tax records of such city."<sup>17</sup>

Such were the provisions for pensions in cities under home-rule government. The day after it was enacted, another law was passed to benefit the Minnesota cities which do not have home rule charters. It applies to cities having a population of fifty thousand and it benefits every employee of the city who is not elective. The age of retirement is established by a retirement board. Three classes of employees are to be pensioned: the contributory, non-contributory, and the exemption classes. The contributory class includes all of those employees who are not in the other two classes and all future entrants into the city civil service. The non-contributory class consists of all employees whose salaries or wages do not exceed \$750 a year. This includes all of the common laborers. The exemption class includes all persons serving in elective positions, on executive boards, non-resident employees, alien employees, pupil nurses, interns and staff physicians employed at the city hospitals, and all "employees who are members of, or who are eligible to become members of an organization or association on behalf of which a tax is levied against the city for the purpose of paying retiring allowances to disabled or superannuated employees." The administrative details will be operated on much the same plan as are the details of a private endowment insurance plan. The retirement board consists of five members who possess

<sup>17</sup> *Minnesota Session Laws* (1919), ch. 430, p. 504.

the powers of a corporation. Refunds of pension payments are equitably provided for those who do not qualify for a retirement pension.

Somewhat different from the Minnesota plan is the municipal pension plan of New York. The 1919 New York act authorizes that pensions be paid out of the amount which the board of aldermen and the board of estimate and apportionment are empowered "to appropriate and provide in the annual budgets and tax levies or by the issues of special bonds for the payment" of the annuities.<sup>18</sup> Prior to the enactment of the Eighteenth Amendment to the Constitution of the United States, pension funds had been obtained from excise moneys or liquor taxes that belonged to the city.

In 1920, these New York acts were supplemented by provision "for a retirement system for officers and employees whose compensation in whole or in part is payable out of the treasury of the City of New York."<sup>19</sup> Managed by the board of estimate and apportionment this New York City Employees Retirement System became operative in October, 1920. The membership is inclusive, admitting laborers and both competitive and non-competitive employees. It also admits those employed in service "other than civil service, whether appointive or elective, as a paid official clerk or employee of the state of New York and of any municipality, county or part thereof and service for any public utility the ownership and operation of which has been taken over by the city. "When transferring to other service groups, the total time will be computed. The system is operated in detail on an actuarial basis and the age of retirement varies according to the nature of the occupation.

Five distinct pension funds are maintained by New York. First, the annuity savings fund. This is one in which are "accumulated deductions from the compensation of members to provide for their annuities, and their withdrawal allowances." Second, the "annuity reserve fund," from which are paid "all annuities and all benefits in lieu of annuities." Third, "the contingent reserve

<sup>18</sup> *New York Session Laws* (1919), pp. 1161, 1505.

<sup>19</sup> *New York Session Laws* (1920), pp. 427, 1056.

fund," in which are accumulated the reserves necessary to pay all pensions and all death benefits "allowable by the City of New York on account of the city service of members to whom prior service is not allowable." Fourth, "the pension reserve fund" is for the payments of "all benefits in lieu of pensions, allowable by the City of New York on account of the city service of members to whom prior service is not allowable." Fifth, the pension fund. This is for the payment of pensions for service to "members to whom prior service is allowable." These pensions do not apply to persons who are entitled to serve in the police, firemen or teachers' pension funds. Special legislation has empowered certain other New York cities to institute civil pension systems.

New Jersey provided in 1919 for pensions for overseers of the poor in cities of the first class. Financial provisions for these pensions are to "be made in the appropriation tax levy for the department of the public service from which such person shall be retired, and no pension shall close or become invalidated by reason of the abolition of the department or office in which he served."<sup>20</sup> In 1920 an amendment to a 1913 act authorized the maintenance of pension funds for employees of local boards of health in cities by compulsory deductions from salaries and by contributions from the state. Another act of 1920 makes it lawful for the appointing agency of municipal recorders to provide for the adequate retirement of such officers.

Illinois revised in 1919 some of her municipal pension laws. Employees of houses of correction who are contributors to the pension fund may retire after twenty years of service irrespective of age with a stipend of six hundred dollars a year.<sup>21</sup> Pensions for park employees received additional modification. City taxes to subsidize such pensions were authorized. The rate of taxation was allowed to be raised as high as two-thirds of a mill on the dollar levied on the taxable property within the district of the park in which the pensioner had been employed. All annuities are to be "computed according to the American Experience Table of Mortality at four per cent interest."

<sup>20</sup> New Jersey *Session Laws* (1919), ch. 109, p. 260.

<sup>21</sup> Illinois *Session Laws* (1919), p. 700.



Massachusetts provided in 1920 that the pension provisions for laborers in the city of Boston "shall include firemen, inspectors, mechanics, drawtenders, assistant drawtenders and storekeepers."<sup>22</sup> No such laborer shall be pensioned in excess of four hundred dollars a year. Employees in correctional institutions and county training schools were allowed the same pension that had previously been extended to prison employees.

Oregon passed an act in 1919 to exempt from attachment and execution all civil pensions paid by the national, state, or local governments, and all private civil pensions paid by any "person, partnership, association or corporation."<sup>23</sup> Many other states inserted such a clause in their regular pension laws.

*Firemen's Pensions.* Much of the state legislation for municipal pensions in 1918-20 was for the benefit of firemen and policemen. Some acts were for the former or the latter especially. Other acts include both types of employees in the same piece of legislation. Three different systems were established: the straight plan, the contributory, and the part-contributory system.

Of the eastern states, Maine and New York made special authorization to certain cities to establish firemen's pensions. New Jersey revised her former laws in 1920 and provided that when the salary deductions, municipal taxes for pensions, fines, and donations are insufficient for the maintenance of the funds, the common council may make an additional levy on the city.<sup>24</sup> Massachusetts enacted that pensioned firemen may be called into temporary service in case of an emergency and receive in lieu of the pension, full pay for such service.<sup>25</sup>

Kentucky authorized in 1920 a part-contributory system in cities of the second class similar to those of the cities of the first class.<sup>26</sup> The funds are placed under the exclusive control of boards of trustees. Judicial power is vested in those boards and their decisions "shall be final and conclusive, and not subject to revision or rehearsal," except by such boards.

<sup>22</sup> Massachusetts *Session Laws* (1920), ch. 79, p. 131.

<sup>23</sup> Oregon *Acts* (1919), ch. 277, p. 453.

<sup>24</sup> New Jersey *Session Laws* (1920), ch. 160, p. 325.

<sup>25</sup> Massachusetts *Session Laws* (1920), ch. 60, p. 39.

<sup>26</sup> Kentucky *Acts* (1920), ch. 28, p. 110.

Oklahoma modified the judicial power of the pension boards in 1919 by providing that persons aggrieved by any decision in regard to pension claim "may appeal from such decision to the District Court of the County"<sup>27</sup> in which the city is located.

Missouri<sup>28</sup> and Kansas<sup>29</sup> in 1919 authorized cities to levy taxes for the support of firemen's pensions. Texas created an optional contributory plan to include fire alarm operators and policemen in cities of ten thousand population.

The legislatures of the northwestern states were particularly active in 1919 in the matter of firemen's pensions. Illinois amended the act of 1887 so that firemen may retire on half pay after twenty, instead of twenty-five,<sup>30</sup> years of service. Minnesota extended police and firemen provisions to officers of the telegraph, signal, and alarm services,<sup>31</sup> and provided that the time that a fireman served in the army or navy during the great War "shall be considered as a part and portion of his active duty in such fire department." Utah instituted a straight payment pension plan, the funds for which are procured from taxes that are collected upon the fire insurance premiums.<sup>32</sup> Montana made it unlawful for any member of a fire department relief association to receive pension benefits "and, at the same time, for the same casualty, an allowance under the Montana Workmen's Compensation Act."<sup>33</sup> Washington established a part-contributory system, the funds for which are to be procured from fees, gifts, instruments, taxes and firemen's contributions.<sup>34</sup>

*Policemen's Pensions.* The pension legislation for policemen during 1919-20 was similar in character to that enacted for firemen. Lowering the age of retirement, increasing the sums of the pensions, and the rate of taxes to be levied for pensions was effected in Connecticut,<sup>35</sup> Minnesota,<sup>36</sup> and California.<sup>37</sup> Wis-

<sup>27</sup> Oklahoma *Session Laws* (1919), ch. 1, p. 1.

<sup>28</sup> Missouri *Session Laws* (1919), p. 582.

<sup>29</sup> Kansas *Acts* (1919), ch. 116, p. 161.

<sup>30</sup> Illinois *Session Laws* (1919), p. 743.

<sup>31</sup> Minnesota *Session Laws* (1919), ch. 68, p. 68.

<sup>32</sup> Utah *Session Laws* (1919), ch. 45, p. 108.

<sup>33</sup> Montana *Session Laws* (1919), ch. 66, p. 127.

<sup>34</sup> Washington *Session Laws* (1919), ch. 196, p. 668.

<sup>35</sup> Connecticut *Acts* (1919), ch. 277, pp. 29-48.

<sup>36</sup> Minnesota *Session Laws* (1919), ch. 152.

<sup>37</sup> California *Acts* (1919), p. 101.

consin authorized common councils to appropriate money to the pension funds to take the place of moneys which had formerly been paid into the pension funds from fees or retail liquor licenses.<sup>38</sup> Various employees who are auxiliary to the police departments, such as assistant matrons, chauffeurs, secretaries, marshals and detectives are included in pension provisions in Massachusetts,<sup>39</sup> Maryland,<sup>40</sup> and Iowa.<sup>41</sup>

*Pensions for County Employees.* Except on the Atlantic and the Pacific coasts little progress was made during 1918-20 in the matter of pensions for county employees. California provided a comprehensive act authorizing counties to establish a retirement system for the payment of annuities, or the payment of total sums in lieu of annuities.<sup>42</sup> This pension system is part-contributory and the contributing employees include both the appointive officers and the other county employees. All non-elective employees of the county who accept the act must become members of the pension association. When a member leaves the service of the county for any reason other than permanent disability before regular retirement, he or his legal representatives will be refunded the contributions with interest. "Mortality and annuity tables based upon the rate and interest" shall be presented by the insurance commissioner.

In contrast to this carefully applied California system, Oregon passed the inevitable special pension act.<sup>43</sup> This was to authorize Multnomah County to grant a special pension to an employee of the county court house who had served twenty-eight years.

On the Atlantic coast, county pensions have been developed in those states where the population is most congested. New York empowered King's County to extend pensions to clerks, stenographers, interpreters, detectives, jury wardens, probation officers, messengers and attendants.<sup>44</sup> Pennsylvania provided

<sup>38</sup> Wisconsin Acts (1919), ch. 262, p. 284.

<sup>39</sup> Massachusetts Acts (1919), ch. 115, p. 78.

<sup>40</sup> Maryland Session Laws (1920), ch. 69, p. 130.

<sup>41</sup> Iowa Session Laws (1919), ch. 344, p. 447.

<sup>42</sup> California Acts (1919), ch. 373, p. 782.

<sup>43</sup> Oregon Acts (1919), ch. 268, p. 444.

<sup>44</sup> New York Session Laws (1918), p. 1003.

pensions for employees of counties having between one million and one million five hundred thousand inhabitants.<sup>45</sup> New Jersey provided half-pay pensions for all county employees who have served forty years and have reached the age of sixty-five.<sup>46</sup> Massachusetts provided refunds with interest for county employees who leave the service before becoming eligible to a pension.<sup>47</sup>

Pensions for sheriffs, prothonotaries, registrars of deeds, registrars of probate, judges and clerks of the county courts, who have held office for forty consecutive years were provided by Nova Scotia in 1918.

*Pensions for State Employees.* Several states established various types of pensions for state employees and amended earlier laws. New York revised her 1909 laws for the retirement of employees in state hospitals for the insane. The retirement fund which is to be permanent is to be acquired by deductions from salaries for leaves of absence without pay, leaves for sickness, and from other sources.<sup>48</sup> Pensions were extended to all persons employed under the superintendent of state pensions,<sup>49</sup> employees of state charitable institutions,<sup>50</sup> and to clerical employees of the Supreme Court.<sup>51</sup>

In 1920 New York enacted a more comprehensive and inclusive system of state civil service pensions.<sup>52</sup> It is similar in plan to that established for the New York City employees, including the contributory feature. Membership in the new plan began on January 1, 1921, and includes practically all persons in the state civil service.

Employees are classified in groups according to occupations. Group one includes male clerks and "administrative professional and technical employees engaged upon duties requir-

<sup>45</sup> *Pennsylvania Session Laws* (1919), No. 100, p. 138.

<sup>46</sup> *New Jersey Session Laws* (1918), ch. 164, p. 489.

<sup>47</sup> *Massachusetts General Acts* (1918), ch. 104, p. 79.

<sup>48</sup> *Nova Scotia Statutes* (1918), ch. 22, p. 592.

<sup>49</sup> *New York Session Laws* (1919), ch. 207, p. 798.

<sup>50</sup> *Ibid.* (1920), ch. 794, p. 19134.

<sup>51</sup> *Ibid.* (1918), ch. 508, sec. 117, p. 1827.

<sup>52</sup> *Ibid.* (1920), ch. 741, p. 1806 ff.

ing principally mental exertion;" group two consists of female clerks; group three, mechanics and laborers; group four, male employees in state institutions; group five includes female employees in state institutions. These classifications are managed by the comptroller who is the head of the retirement system. As in some other states, four options were allowed as to the payment of the pensions.

Connecticut<sup>53</sup> and Maine<sup>54</sup> enacted similar state civil service retirement laws in 1919. New Jersey provided in 1917 a half-pay pension for sergeants-at-arms of the court of claims.<sup>55</sup> Massachusetts made provision in 1920 for the retirement of fish and game wardens.<sup>56</sup>

Several acts providing for special pensions to civil employees have recently been passed in New York,<sup>57</sup> Newfoundland,<sup>58</sup> Quebec,<sup>59</sup> and Cape of Good Hope.<sup>60</sup>

Pensions other than those for clerical employees have been recently instituted in many states in the form of annuities for judges, teachers, mothers, and indigent aged persons.

*Judiciary Pensions.* Louisiana by constitutional amendment in 1910 provided for pensioning supreme court judges, and by further amendment in 1918 provided for pensioning judges of lower courts. Legislation for judiciary pensions has been recently enacted in New Jersey, Illinois, and Australia. In 1920 New Jersey provided that disabled judges might retire on half pay before reaching seventy years of age and before serving the ordinary fourteen years.

Illinois decided in 1919 to pension judges who should retire after having served as judges in the courts an aggregate of twenty-four years and having attained the age of sixty-five.<sup>61</sup> This pension is to be granted to "any judge of a court of record in the

<sup>53</sup> Connecticut *Session Laws* (1919), ch. 210, p. 2867.

<sup>54</sup> Maine *Public Acts* (1919), ch. 38, p. 35.

<sup>55</sup> New Jersey *Session Laws* (1919), ch. 153, p. 340.

<sup>56</sup> Massachusetts *Acts* (1920), ch. 304, p. 321.

<sup>57</sup> New York *Session Laws* (1920), ch. 725, p. 1784.

<sup>58</sup> Newfoundland *Statutes* (1919), ch. 39, p. 117.

<sup>59</sup> *Statutes of Quebec* (1920), ch. 22, p. 69.

<sup>60</sup> *Ordinance of Province of the Cape of Good Hope* (1918), p. 56.

<sup>61</sup> Illinois *Session Laws* (1919), p. 413-14.

state of Illinois whether of the Supreme, Circuit, Superior, Probate, County, City or Municipal Court."

*Teachers' Pensions.* Teachers' pensions systems have been modified in a few states. New Jersey, which has been the storm center of teachers' pension controversies, litigation and agitation since 1903, again had her laws revised in 1920. Practically all legal obstacles to a complete development of a model pension system now seem to have been completely swept aside in New Jersey, by legislation subsequent to the ruling in the case of *Allen v. Board of Education of the City of Passaic*,<sup>62</sup> in 1911. The constitutionality of the pension law was established in this critical case. It was held that deductions from teachers' salaries were a part of the contract and such deductions "do not constitute the taking of property without due process of law or the taking of private property for public use without just compensation." Such deductions are not "an exercise of the taxing power of the state" and the law which authorizes it is "not a private, local, or special law."

The 1920 act supplements this decision by providing that "should a contributor die before retirement, his accumulated deductions shall be paid to his estate or to such person having an insurable interest in his life as he shall have nominated." Four optional annuities are permitted.

Maryland modified her laws in 1920; established the Maryland teachers' retirement system, created a retirement fund, and provided for the payment of annuities to teachers in state educational institutions who retire or become disabled.<sup>63</sup> The system is noncompulsory. Teachers may become members upon application if the application is approved by the retirement board.

General superintendents of schools will be entitled to teachers pensions in Porto Rico by virtue of 1919 legislation.<sup>64</sup>

*National Civil Service Pensions.* Until May 22, 1920, the United States was the only great western nation which had no general pension system for its civil service employees. There had been pensions for certain government officials and em-

<sup>62</sup> New Jersey Law Reports, Vol. 81, p. 135.

<sup>63</sup> Maryland Acts (1920), ch. 447, p. 154.

<sup>64</sup> Porto Rico Statutes (1919), No. 7, p. 110.

ployees, but there was no general retirement system for the main body of the civil service. Practically no attention was given to the subject in America until the twentieth century, although civil pensions had been developing in European states since the Council of Chalcedon in 451 A.D., and although military pensions in America had developed to gigantic and discreditable proportions since 1636, when the Plymouth Pilgrims inaugurated such pensions. But on May 22, 1920, after a decade of intense agitation, Congress passed "an Act for the retirement of employees in the classified civil service."<sup>65</sup>

It is a compulsory, part-contributory civil pension system. Employees are eligible to retire at seventy years, and they must retire at seventy-four provided they have served fifteen years. Mechanics, city and rural letter carriers, and post office clerks, however, are eligible to retire at sixty-two years of age, after fifteen years of service.

A deduction of two and one-half per cent of the employees basic salary is paid into "the civil-service retirement and disability fund." Should the contributor become separated from the civil service before arriving at the age of retirement, he will be refunded his deductions at four per cent interest compounded.

"For the purpose of determining the amount of annuity which retired employees shall receive," the employees are divided into six classes according to the length of their periods of service which varies from fifteen to thirty years. Likewise the corresponding annuities vary from a rate equal to thirty per cent of the basic pay to sixty per cent of the basic pay of the employee. The annuities are paid monthly. The pension system is administered by the commissioner of pensions under the supervision of the secretary of the interior. A board of actuaries is created consisting of three members.

The provisions of the pension system "may be extended by executive order, upon recommendation of the civil service commission, to include any employee or group of employees in the civil service of the United States not classified at the time of the passage" of the act.

<sup>65</sup> *Statutes of the U. S.*, 66th Cong., 2nd Session, ch. 195, p. 614.

## AMERICAN GOVERNMENT AND POLITICS

THE THIRD SESSION OF THE SIXTY-SIXTH CONGRESS,  
DECEMBER 6, 1920—MARCH 4, 1921\*

LINDSAY ROGERS

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**The Legislative Record.** Apart from the appropriation bills the legislative record of the third (and final) session of the Sixty-sixth Congress was almost entirely negative. That was to be expected. The only purpose of a short session is to care for supply and Congress is fortunate if it is able to do this. A session of the old Congress after the election of the new, is one of the most striking anomalies of representative government in the United States. In the present case, there was an exceptionally large number of "lame ducks"—fifteen senators and one hundred and fourteen representatives, although defeated, continued to legislate for three months. Congress is always inclined, furthermore, to wait for a new administration to disclose its plans and there was little use of passing legislation which would be objected to by Mr. Wilson. The President was not sparing in his use of the veto power, and disapproved a number of bills.

**The Appropriation Bills.** Until nearly the close of the session, the indications were that several of the appropriation bills would fail to pass. The Senate had devoted so much time to the Emergency Tariff Bill and to miscellaneous debate, that a legislative jam in the final days seemed inevitable. In the House the situation was much better. On February 17, Mr. Mondell was able to say that the House had "established a record in the prompt and early passage of appropriation bills. The last appropriation bill has passed the House at an earlier date than at any short session in the last twenty-five years."<sup>1</sup> This

\* For previous notes on the work of Congress, see *American Political Science Review*, Vol. 13, p. 251 (1919), Vol. 14, pp. 74, 659 (1920).

<sup>1</sup> *Congressional Record*, p. 3547. On the other hand, Senator Poindexter said that the chief reason for the failure of the Naval Appropriation Bill was the late day (February 15) on which it was received from the House of Representatives. "As it came from the House of Representatives, the bill was in such



record was due, in part to the handling of all appropriation bills by a single committee and in part, also, to the fact that President-elect Harding, although "exceedingly hesitant" about expressing his views, anxious to avoid "any unbecoming intrusion," and begging Mr. Mondell not to "misconstrue," asked the leaders of the Senate and the House to get the appropriation bills out of the way "so that the new Congress can give its entire attention to the work which we all know it will have to perform."

## HISTORY OF APPROPRIATION BILLS, THIRD SESSION

BILL (H. R.) NO.	TITLE	HOUSE REPORT NO.	PASSED HOUSE	SENATE REPORT NO.	PASSED SENATE	SENT TO CONFERENCE	CONFERENCE REPORT (HOUSE) NO.	CONFERENCE REPORT AGREED TO	DATE APPROVED	LAW NO.
			1920.		1921.	1921.		1921.	1921.	
15130	District of Columbia.....	1134	Dec. 18	677	Jan. 19	Jan. 24	1321 <sup>a</sup>	Feb. 15-17	Feb. 22	326
15344	Pensions.....	1144	Dec. 23	742	Feb. 10	.....	.....	.....	Feb. 16	317
			1921.							
15422	Sundry civil.....	1153	Jan. 7	755	Feb. 9	Feb. 11	1355-1418	Mar. 3	Mar. 4	339
15441	Post Office.....	1154	Jan. 8	721	Feb. 13	Feb. 19	1350	Feb. 25	Mar. 1	337
15543	Legislative.....	1165	Jan. 14	774	Feb. 14	Feb. 16	1375	Mar. 1	Mar. 3	364
15682	Indian.....	1184	Jan. 20	744	Feb. 10	Feb. 12	1338	Feb. 25	do....	359
15813	Agriculture.....	1212	Jan. 27	777	Feb. 23	Feb. 23-24	1384	Mar. 2	do....	367
15872	Diplomatic and consular.....	1226	Jan. 31	773	Feb. 18	Feb. 19	1348	Feb. 24-25	Mar. 2	357
15935	Rivers and harbors.....	1256	Feb. 1	776	Feb. 25	.....	.....	.....	Mar. 1	353
15943	Army.....	1264	Feb. 8	809	Feb. 26	Feb. 26-28	1398-1409	Mar. 3	.....	Vetted.
15963	Deficiency (first for 1921).....	1274	Feb. 10	803	Feb. 18	Feb. 19	1346-1353	Feb. 24	Mar. 1	338
15975	Navy.....	1281	Feb. 14	816	.....	.....	.....	.....	.....	.....
16100	Fortifications.....	1326	Feb. 17	806	Feb. 26	.....	.....	.....	Mar. 3	368

<sup>a</sup>Also Senate Document 391.

Congress finished everything except the Naval Appropriation Bill which was withdrawn in the Senate. Advocates of economy were sufficiently strong to kill it by a filibuster, but the leaders, foreseeing its fate, did not force the issue. As reported to the Senate it carried one hundred million dollars more than as passed by the House, but the House had only consented to the bill on assurances from its leaders that no increases by the Senate should be allowed. So, even if the Senate had acted, the conference committee and the objections of the House would

form that, if it had been enacted into law, it would have led to the demoralization of the American Navy, and to a paralysis of the great organization which has been undertaken." *Ibid.*, March 3, p. 4571.

have been sufficient to defeat the measure. President Wilson vetoed the Army Appropriation Bill on the ground that it did not provide for a sufficiently large army. The other eleven bills became law.<sup>2</sup> Their history is given above. In spite of the drive for economy the total appropriations (including the navy bill as passed by the House) amounted to nearly four billions. A comparison of the 1922 figures with those for 1921 is given below.

Forty legislative riders were attached to the appropriation laws, but few were of any importance. The deficiency law authorized the reëxamination of midshipmen found deficient at the close of their last term; the postoffice law authorized the secretary of war to loan tractors to highway departments of states for use in the construction of roads; the diplomatic and consular bill provided for the appointment of a commission on embassy and legation buildings abroad; the legislative, executive and judicial law changed the title of the "Superintendent of Capitol Building and Grounds" to "Architect of Capitol;" the agricultural law appropriated two million dollars for loans to farmers in drought-stricken regions for the purchase of seed grain, and authorized the president to invite foreign governments to participate in a world's dairy congress.

*Other Legislation.* Congress passed 115 public laws, but 20 of these related to bridges and 60 others were of only local importance. It is worth while noting that 44 of them were approved by Mr. Wilson on the last two days of the session. There were 17 public resolutions, 47 private laws, and 2 private resolutions. Four measures became law since they were not signed ten days after their receipt by the President, but in two of these cases, the bills were lost.

The only features of the legislative output worth mentioning are an amendment to the Esch-Cummins Railroad Law (Public No. 328; February 26, 1921); an amendment to the Export Finance (Edge) Act to authorize the use of corporations as depositaries in the Panama Canal Zone and United States possessions (Public No. 329; February 27); an amendment of the Trading with the Enemy Act (Public No. 332; February 27); an amendment of the Farm Loan Act (Public No. 379; March 4), and a joint resolution (S. J. Res. 191; Pub. Res. 54) creat-

<sup>2</sup> In the short session of the Sixty-second Congress the sundry civil bill and the Indian appropriation bill failed; at the close of the Sixty-fourth Congress, the army bill, the general deficiency bill, the military academy bill, the river and harbor bill, and the sundry civil bill failed; and at the short session of the Sixty-fifth Congress a filibuster in the Senate prevented the passage of six of the great annual supply acts and one deficiency bill. *Congressional Record*, p. 4743.

**REGULAR AND PERMANENT ANNUAL APPROPRIATIONS FOR FISCAL YEAR 1922  
COMPARED WITH APPROPRIATIONS MADE FOR FISCAL YEAR 1921<sup>a</sup>**

REGULAR ANNUAL APPROPRIATION ACTS (COMPLETED)	APPROPRIATIONS, FISCAL YEAR 1921.	APPROPRIATIONS, FISCAL YEAR 1922.	INCREASE (+) OR DECREASE (-), 1922 APPROPRIATIONS COMPARED WITH 1921 APPROPRIATIONS.
Agriculture.....	\$31,712,784.00	\$36,404,259.00	+ \$4,691,475.00
Army (including Military Academy).....	894,700,877.70	848,703,906.80	-47,996,970.90
Diplomatic and Consular.....	9,220,537.91	9,326,550.79	+ 106,012.88
District of Columbia.....	18,373,004.87	19,412,412.99	+ 1,039,408.12
Fortifications.....	18,883,442.00	8,038,017.00	-10,795,425.00
Indian.....	10,020,558.27	9,761,584.87	- 259,000.00
Legislative, executive, and judicial.....	106,570,610.11	110,345,018.75	+ 3,774,408.64
Pension.....	379,150,000.00	355,500,000.00	-13,650,000.00
Post Office.....	504,434,700.00	574,057,552.00	+69,622,852.00
River and harbor.....	12,400,000.00	15,250,000.00	+ 2,850,000.00
Sundry civil.....	435,848,806.93	334,196,760.41	-51,652,046.51
Total, regular annual appropriation acts, completed.....	1,821,265,018.78	1,778,996,082.41	-42,268,936.37
Regular annual appropriation act, pending.			
Naval.....	433,279,574.00	5896,001,249.23	-37,378,324.77
Grand Total, regular annual appropriation acts.....	2,254,544,592.78	2,174,997,281.64	-79,547,311.14
PERMANENT AND INDEFINITE APPROPRIATIONS.			
Interest on the public debt.....	975,000,000.00	922,650,000.00	- 52,350,000.00
Sinking fund.....	253,404,864.87	265,764,864.87	+ 12,360,000.00
Expenses of loans.....	12,499,182.96		- 12,499,182.96
Roads, construction of.....	104,000,000.00	1,000,000.00	-103,000,000.00
Customs Service, repayments, etc.	20,200,000.00	27,000,000.00	+ 6,800,000.00
Indian funds, and interest on same.	23,775,000.00	23,475,000.00	- 300,000.00
Miscellaneous.....	38,847,752.29	60,898,496.00	+ 22,048,743.71
Increased compensation to certain employees (\$240 bonus).....	35,000,000.00	35,000,000.00	
Total, permanent and indefinite appropriations.....	1,462,729,800.12	1,835,776,360.87	-126,950,439.25
Miscellaneous, including \$18,600,000 for hospitals.....		20,000,000.00	-20,000,000.00
Grand total, regular annual and permanent and indefinite appropriations.....	3,717,271,392.90	3,530,773,642.51	-186,497,750.39
Deficiencies.....	187,006,165.28	275,258,005.21	-88,249,839.93
Railroads.....	800,000,000.00		-300,000,000.00
Grand total.....	4,704,277,558.18	3,806,029,647.72	-398,247,910.46

<sup>a</sup> Congressional Record, March 4, p. 4734.<sup>b</sup> As passed by the House.<sup>c</sup> Deficiencies for 1920 and prior fiscal years.<sup>d</sup> Deficiencies for 1921 and prior fiscal years.<sup>e</sup> Enclosing the naval bill as passed by the house.

ing a joint committee on the reorganization of the administrative branches of the federal government.

The measure for the reapportionment of representatives in Congress under the fourteenth census (H.R. 14498; House Report 1173) passed the House on January 19 but was not considered in the Senate. In its first form it would have increased the number of representatives from 435 to 483—one for every 218,986 of the population, instead of one for 242,415 as at present<sup>3</sup> but the sentiment of the House was against the increase and the bill was amended to retain the present number 435. This, if adhered to, will mean a reduction in the representation of eleven states.<sup>4</sup> But the matter went over to the Sixty-seventh Congress, and the self-denying ordinance may not be thought to be binding.

*Presidential Vetoes.* During the session, Mr. Wilson refused to approve 14 measures. Three were passed over his veto. The Senate voted 53—5, and the House 250—66, to override the veto (January 3, 1921) of the Senate Resolution (S. J. Res. 212) for the rehabilitation of the War Finance Corporation and for loans to farmers (Pub. Res. 55); the House Resolution providing for enlistments in the army to be discontinued until the quota was not more than 175,000 men (vetoed on February 5) was also passed over the President's objection (Pub. Res. 59), as was a measure relating to the drainage of Indian allotments of the Five Civilized Tribes of Indians (Public No. 355). In two cases, a two-thirds vote was lacking. These were a minor measure to issue a land patent to the Milk River Valley Gun Club of Montana (S. 793) and the emergency tariff bill, vetoed on March 3 (H. R. 15275). The House failed to override the veto by a vote of 201—132, and the political business which had consumed most of the Senate's time during the session came to naught.

In four cases no effort was made to overcome the President's objections: Senate 4526, to extend the date on which section 10 of the Trust Law relating to interlocking directorates would become effective, and three private measures. Included in Mr. Wilson's total of fourteen vetoes were five pocket vetoes. One of these was the bill for

<sup>3</sup> See "Hearings before the Committee on the Census, House of Representatives, Sixty-sixth Congress, Third Session," on H. R. 14498, H. R. 15158, and H. R. 15217, December 28, 1920—January 6, 1921; House Document No. 918, and *Congressional Record*, January 18 and January 19.

<sup>4</sup> The increase of the representatives to 483 would mean that no state would have its representation reduced. It may be added that the debate raised the question of the disfranchisement of the negro in the South and the possibility of legislation under the Fourteenth Amendment.

the temporary suspension of immigration (H. R. 14461); one was the army appropriation bill, which did not, in the President's opinion, make provision for an adequate army; and one was a measure for the reorganization of the war risk insurance bureau (H. R. 13558).<sup>5</sup> The other two were bills for private laws.

*Congressional Investigations.* During the Sixty-sixth Congress, regular or special committees investigated the following matters: the price of coal; socialist activities in the federal trade commission; the strike of railroad employees; the peace treaty "leak;" reparation by Mexico; the status of C. A. K. Martens, of Russia; the shortage and price of sugar; the wheat situation and transportation problems in the Southwest; the amount and grades of cotton and wheat held in the United States; the whole question of public buildings and grounds; the suspension of Miss Alice Wood, a District of Columbia school-teacher; rents and the high cost of living in the District of Columbia; bread prices; the activities of government departments in public health matters; the eligibility of Victor Berger to membership in the House of Representatives; war department contracts and expenditures; budget systems; the shipping board and fleet corporation; the public school system in the District of Columbia; housing conditions and building construction; the Michigan senatorial election case; campaign expenditures of candidates for the presidential nominations; expenditures of the presidential candidates; the constitutionality of the peace treaty with France; war risk insurance matters; the case of Robert A. Minor, alleged distributor of Russian propaganda, who was detained in France; action by the attorney-general on the Louisiana sugar situation; loans to foreign countries; illegal entry of aliens across the borders of the United States; deportation proceedings; loans by the federal reserve board on wheat and other cereals; print paper prices; speculation by United States grain corporation officials; cotton acreage; Canadian control of railroads in the United States; living conditions of railroad trainmen who

<sup>5</sup> It may be said that during the first two sessions of the Sixty-sixth Congress, Mr. Wilson vetoed fourteen other measures. Two of these were passed over his veto: the prohibition enforcement bill, and the repeal of the daylight saving law. Four measures vetoed became law in substituted and modified bills. In two cases the two-thirds vote was lacking: the resolution (E. J. Res. 327, vetoed May 27, 1920) terminating the state of war and the bill providing a budget system. In three cases no effort was made to override the veto, and at the close of the second session, three measures failed under a pocket veto. Most of these facts have been given in previous notes in this *Review*, but are here summarized to make a complete record of the vetoes during the Congress.

lie over between trips; mining conditions in Pennsylvania and West Virginia; coal costs to railroads; discrimination in prices paid for live stock; oil and petroleum prices; the price of shoes; animal feeds; loose-leaf tobacco prices; causes of the steel strike; the federal board for vocational education; conditions in the Virgin Islands and what constitutes a "fighting navy."

This list is much longer than that of the Sixty-fifth Congress, because of the fact that the Congress was Republican and the President Democratic, although, as will be seen from the enumeration, the purpose was not only to investigate the executive, but to secure information for the legislature. In addition to these investigations, which were actually held, nearly two hundred other inquiries were proposed, but not sanctioned by the chambers, and the regular committees, in the course of ordinary activities (hearings on appropriation bills, for example) probed into many executive matters which have not been mentioned.

**Notes on Procedure.** The business of the session raised a number of interesting questions of congressional procedure. There was the usual discussion of the seniority rule for the chairmanships of the committees, with proposals for supplanting it by free election. But the admitted evils of a system under which men hold their posts not according to fitness but to length of service are known while those of a new scheme are not, and no change is contemplated. In the Senate, the situation was amazing. For day after day it laid the appropriation bills aside and discussed a makeshift, compromise tariff bill when it was sure that President Wilson's inevitable veto could not be overridden. With a very few exceptions the Senate confirmed no appointments; they, and the pending treaties, were left for recommendations from the incoming President.

The House of Representatives at times showed its restlessness under the unavoidable, but occasionally irksome and unsatisfactory dictatorship by a steering committee. But, in addition to the incidents concerning points of no quorum and individual filibusters, which make the observer wonder whether the House is a deliberative body, there were several important questions raised by the operation of the new House rules concerning appropriation bills.

*The House Budget Rules.* At the preceding session, to prepare for the operation of the budget bill, the House revised its rules so that a single committee on appropriations, consisting of 35 members, would deal with the budget, and, pending its inauguration, with all the appro-

priation bills.<sup>6</sup> At the same time, to quote Chairman Good of the House appropriations committee, "the House changed its rules in another vital particular, which increased the work of making appropriations.<sup>7</sup> Rule XXI was amended so that Senate amendments, which would have been subject to a point of order if offered on the floor of the House to an appropriation bill, should be brought back to the House by the conferees for a vote. This change has taken from the conferees some of the power they have hitherto possessed, and has placed in the House the power to pass on all Senate amendments on appropriation bills carrying legislation.

"Those who have closely followed the history of appropriation bills realize the power of conferees under the old system. Take the Naval appropriation bill, for example. Not infrequently did the Senate add several pages of legislation to the annual naval bill. Some of this legislation was often repugnant to the members of the House, and most of it was never understood, not even by the conferees themselves. It was legislation sent by the departments on which there were no hearings, and for which the necessities were never explained. Too frequently such amendments were incorporated in the conference report, and the members of the House never had an opportunity to discuss, consider or vote upon the legislation which was thus placed upon the statute books. They were compelled either to vote up or down an entire conference report. This is a grave responsibility, and the ordinary member would rather shut his eyes and vote for a conference report, even though it carried legislation he did not believe in, rather than assume the responsibility of voting against a great supply bill.

"When this rule was changed and until about two weeks ago, it was confidently predicted by well-informed members of the House who have

<sup>6</sup> See *American Political Science Review*, Vol. 14, p. 670.

<sup>7</sup> The exact language of the amendment is as follows:

"2. Any amendment of the Senate to a general appropriation bill which would be in violation of the provisions of clause 2 of Rule XXI, if said amendment had originated in the House, shall not be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment."

The language of Rule XXI, which was referred to, is as follows:

"2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress." *House Manual and Digest*, sec. 815.

followed the history of appropriations, that the proposed change was unworkable and that too much time would be involved in considering Senate amendments. That rule has lived long enough to justify its existence and prove its great value. In this Congress every important Senate amendment carrying legislation was laid before the members of the House, and on each of those amendments the House took a separate vote. The fact that we have had that kind of a rule has forced the Senate to withhold very, very many amendments providing new legislation, which otherwise would have found a place in the supply bills. More than that, this very wholesome rule has forced the Senate to respect the rules of the House. The retention of this rule and the strict enforcement of it will maintain for the House its proper place in the legislation of the Congress."<sup>8</sup>

Mr. Good's opinions seemed to be generally shared by the House, although during the session there were a number of criticisms. The objections came, for the most part, from members of the committees which had had charge of the different appropriation bills, and who had lost some of their prestige. It was said that 35 men ran the House; that the 150 men who had worked hard on these committees "might as well be given a time table and told to go home. The 35 men on the Appropriations Committee could even take their proxies and their return would not be necessary."<sup>9</sup> A more serious objection was that, under the rule quoted in the footnote, necessary appropriations, when not authorized by law, were subject to points of order, and the points were made, in many cases, by the members of the committees which previously had had the appropriations within their jurisdiction.<sup>10</sup> It

<sup>8</sup> *Congressional Record*, March 4, p. 4743. The most serious deadlock between the House and the Senate under this rule was probably on the sundry civil bill. A Senate amendment appropriated ten million dollars for the Muscle Shoals nitrate proposition. The House conferees submitted the amendment to the House and by a vote of 182-193 the House refused to recede from its position and concur in the Senate amendment (February 25, *Congressional Record*, p. 4100.) On March 3, the House by a vote of 144-207 again insisted on its disagreement (p. 4654), and the Senate was forced to yield. (March 3, p. 4711.)

<sup>9</sup> On February 11, Congressman Lanham read to the House his poem entitled "In Memory of Those Who Died at the Battle of Budget Hill." A Parody on the "Charge of the Light Brigade," this effusion extolled "the slaughtered four hundred" whom the thirty-five had "shattered and sundered."

<sup>10</sup> Congressman Britten, however, complained that the appropriations committee was legislating; that, by making it appear that the appropriations were for additions to naval equipment, grants were made for what were really new purposes, not authorized by law, but not subject to points of order. *Congressional Record*, February 12, p. 3231.



was not feasible for the necessary legislation to be brought in and passed under the general rules of the House, so the Senate was relied upon to insert the appropriations. But this required more time and the judgment of the House was limited to a "yes" or "no." Nevertheless the last days of the session, so far as the House was concerned, were less chaotic than usual.<sup>11</sup>

A very interesting question as to the right of the House of Representatives to originate bills for raising revenue was brought up by Congressman Luce. He suggested that Senate Joint Resolution 212, reviving the War Finance Corporation, contravened the Constitution, and proposed to the House a resolution providing for the return of the Senate measure to the body in which it originated. Following a ruling by Speaker Carlisle, the Speaker submitted to the House the question whether the resolution presented by Congressman Luce involved a privileged matter, and the House decided that it did not.<sup>12</sup>

*Guillotine.* Following the precedent of the bonus bill,<sup>13</sup> suspension of the House rules, with debate limited, and no amendments allowed, was resorted to in the case of important controversial legislation. But the House revolted. On Monday, February 7 "Suspension day"—the House steering committee proposed to suspend the rules and pass House Resolution 15836, to amend the Transportation Act of 1920.<sup>14</sup> This procedure allowed twenty minutes of debate a side, no amendments, and required a two-thirds vote. Members objected not so much to the bill as to the method. The bill had been reported to the House on January 26, and the rules committee had brought in a resolution (H. Res. 663) for a rule under which the bill could be debated and

<sup>11</sup> On January 7, Speaker Gillett made a very important ruling under Rule XXI. House Resolution 15163, on the union calendar number 373, was reported from the committee on Indian affairs, carrying an appropriation of \$100,000. The committee, observing the spirit of the rule, reported an amendment striking out the appropriation and inserting an authorization. For the purpose of securing a ruling, Congressman Mann made the point of order that the bill was erroneously on the calendar. "It seems to the Chair," the Speaker said, "that the purpose of the rule—to prevent legislative Committees from reporting appropriations will be effected by ruling that the point of order lies against the item of appropriation, and not against the reporting of the bill." *Congressional Record*, p. 1181.

<sup>12</sup> See *Congressional Record*, December 18, p. 536.

<sup>13</sup> See *American Political Science Review*, Vol. 15, p. 79.

<sup>14</sup> House Report No. 1243, January 26: rejected in House, February 7; passed House, February 8; reported in Senate, February 16; passed Senate, February 22; approved by President, February 26; Public No. 328.

amended. The steering committee of the House apparently vetoed this customary course which the interstate commerce committee was intending to take and decided to get the bill through in forty minutes. The revolt against the leadership of the House was rather more voluble than usual,<sup>15</sup> and two-thirds not voting in its favor, the proposal was rejected.

House Resolution 663 was called up the next day. Twenty minutes a side were allowed on the resolution and an hour's debate on the bill; but the resolution also provided that "the bill shall be read for amendment under the 5-minute rule." Only one amendment was accepted, but it was an important one, and the bill was passed without a yea and nay vote, 311 members present.<sup>16</sup>

Even obnoxious gag rules, however, were not sufficient to delay the passage of a measure (H. R. 15894) which provided better "hospitalization" for disabled soldiers. The bill was passed unanimously, although in some respects it was considered unsatisfactory by a material percentage of the membership of the House, and, as in the case of the railroad legislation, the method was objected to.<sup>17</sup>

<sup>15</sup> Mr. Barkley: "It is nothing short of an outrage that this bill is brought in under these conditions. There are many members on both sides of the House who want to support it. I myself will support it under proper conditions, but I will not vote to suspend the rules and pass this bill without debate or amendment." *Congressional Record*, p. 2869.

Mr. Rayburn: "This move here today is made in the face of everything that has been agreed to in our committee since its organization for fair consideration. This move is made in order to protect the leadership of this House, the members of the Rules Committee, because they are afraid to report a rule for a bill and not report it on other matters. They are saying that they will not report any rules at all!" (P. 2869.)

Mr. Sims: "This bill provides potentially for \$400,000,000 to be taken out of the Treasury . . . the appropriation being automatic under the Transportation Act. Not even an amendment can be offered. What is the matter with the bill? Is it so good that no member of the House should be permitted to offer an amendment to it?" (P. 2870.)

<sup>16</sup> *Congressional Record*, p. 2951.

<sup>17</sup> Provision was made for five hospital plants for the treatment of neuro-psychiatric and tuberculosis patients; "One in the Central Atlantic Coast States, one in the region of the Great Lakes, one in the Central Southwestern States, one in the Rocky Mountain States, and one in Southern California." These locations were denounced as "porkbarrel allotments," three of them of doubtful suitability for tuberculosis patients. The problem, Mr. Wingo said, should be settled "free from any sectional discrimination or political trade or trafficking." The gentlemen in charge of the bill deprecated "partisanship and sectionalism and log-rolling," yet as a matter of fact, the bill is brought here

*Filibusters in the House.* The attempt is made by elaborate rules to take from the members of the House of Representatives that power to delay proceedings which is possessed by the individual senator. But, during the short session, the House had rather more filibusters than usual.

A filibuster defeated a bill promoting Major General Enoch H. Crowder to the rank of lieutenant general upon his retirement from active service. An hour was taken up by discussing whether the bill (S. 2867) was in order under the rule permitting the House to go into committee of the whole House to consider business on the private calendar. The rule provides that "on every Friday except the second and fourth Fridays, the House shall give preference to the consideration of bills reported from the Committee on Claims and the Committee on War Claims, alternating between the two Committees." The Crowder measure came from the committee on military affairs. After a lengthy discussion and a number of dilatory motions,<sup>18</sup> the chairman ruled that the bill was properly before the committee, and that its consideration was in order if the committee of the whole did not vote to take up measures reported from the two committees given preference by the rule. Discussion of the merits of the bill proceeded for over two hours, and the rest of the day's session, which lasted seven hours, was taken up by dilatory motions and roll calls.

Congressman Greene, who had the measure in charge, was unable to agree with the opponents of the bill on an allocation of time and moved that the committee rise. This was agreed to, 96-47, but the point of no quorum was made and there was a roll call on a motion to adjourn. Mr. Greene then moved that the House resolve itself again into the "Committee of the Whole House on the State of the Union," and pending that, he moved that general debate on Senate 2867 be closed, and on that motion demanded the previous question. There was a roll call on the previous question, which was ordered by 173-146, and immediately thereafter another roll call on a motion to adjourn. This was lost. The motion to close debate was carried,

under suspension of the rules of the House so that the Democratic side of this House and no man on the Republican side of the House who wants to go further and offer amendments so to meet the whole problem by a broad constructive bill instead of the piecemeal bill is denied the opportunity to do so." *Congressional Record*, February 7, p. 2863.

<sup>18</sup> On one of these the chairman voted in the negative and made the result a tie, so that the motion to consider bills from the committee on claims was lost. See *Hinds Precedents*, sec. 5997.

with another roll call. It was then discovered that the House was in a tangle, since Mr. Greene's motion should have been to go into committee of the whole House, and not committee of the whole House on the State of the Union, a palpable error of form, since the Crowder bill could only be considered in the former committee. The Speaker made a liberal ruling: "that the motion to close debate which was made and voted on by the House, was not so dependent upon the original erroneous statement that he made as to be invalid because the original one was a mistake." So the chair held that the House had voted to close debate, that Mr. Greene might withdraw his original motion, move that the House go into committee of the whole House, and on that move the previous question. But before the result of the vote to order the previous question was announced a motion to adjourn was carried. The filibuster had been successful.<sup>19</sup>

A one-man filibuster, continuing for some time, was conducted by Congressman McClintic. On January 26 he began to object to extensions of remarks in the *Record*, on the ground that the paper shortage made it advisable to reduce the length of the report of congressional proceedings, and made several points of no quorum.<sup>20</sup> On each of the succeeding legislative days, Mr. McClintic made points of no quorum and on January 31 he made the point before the chaplain's prayer opening the House. The roll was also called before the prayer on February 1. When the army appropriation bill was reported Mr. McClintic objected to the request for unanimous consent that the first reading be dispensed with and the clerk read for an hour and a half. On February 2 the Speaker ruled that the point of no quorum could be raised at any time and was not barred by Rule xxiv providing that the order of business should begin with prayer. The roll was therefore called before the prayer on February 2 and February 3.

On February 4, however, the Speaker changed his ruling. He quoted Rule VIII: "The Chaplain shall attend the commencement

<sup>19</sup> For the report of the proceedings, see *Congressional Record*, February 18, pp. 3614-3639.

<sup>20</sup> January 26 was an interesting day also, in that the House voted 141-142 against an amendment to the agricultural appropriation bill providing \$360,000 for free seeds. A motion to reconsider was made and a motion to lay that on the table resulted in a vote of 131-131. The next day the House voted 166-153 to reconsider its action and the amendment passed by 169-149. There had been four roll calls on the item. The amendment was struck out by the Senate and the House voted (February 28) 198-184 to insist on its action. The Senate debated the matter for an hour on March 2 and voted for it, 55-22.

of each day's sitting of the House and open the same with prayer," and then discussed whether the prayer is business. This is probably the first ruling ever made by a Speaker of the House on the nature of prayer and Mr. Gillett's language deserves to be quoted:

"Obviously that (Rule VIII) provides that the opening exercises of the House shall be prayer by the Chaplain. The Chair thinks that it is not a matter of business but that it is a matter of ceremony, of devotion, and that its appeal is not to the duty of members to hear it, but to their sense of reverence. Presence of members is not compulsory. Rule I provides that the Speaker shall take the chair and call the members to order, and on the appearance of a quorum cause the Journal to be read. There it specifically says that for the reading of the Journal, which is the first business after prayer by the Chaplain, a quorum shall appear. By indirection that would indicate that the prayer does not require the presence of a quorum inasmuch as the rule particularly says that it does require a quorum to read the Journal.

"The Chair therefore is disposed to think that the offering of prayer by the Chaplain is not business of the House that requires a quorum, and that regardless of any gentleman's sense of reverence or propriety, it is not in order to make the point of order that there is no quorum present."<sup>21</sup> An appeal from the decision of the chair was laid on the table, 232-70. Mr. McClintic's objections, however, which continued until the end of the session, resulted in the *Record* providing a more accurate account of proceedings in the House than has been the case for a number of years.

<sup>21</sup> *Congressional Record*, p. 2691. On February 5, the day before the attempt to suspend the rules and pass the railroad bill (see above) Congressman Huddleston inquired what the intentions of the Republican leaders were with reference to the Winslow Bill, and when the information was refused conducted a little filibuster for the afternoon. He offered twenty amendments to the army appropriation bill (which was being considered under the five minute rule) and argued them all (with allusions to the proposed railroad legislation) until called to order for not discussing the matter at issue. He made three points of no quorum which did not require roll calls since the President's message vetoing the army resolution was to be voted upon and one hundred members—the committee of the whole quorum—were present. But when the committee of the whole reported the army bill to the House, Mr. Huddleston made the point, the roll was called, followed a moment later by a yea and nay vote on the veto message.

*Congressional Record*, p. 2777ff.

Certain members of the House also sought, from time to time, to secure information from the leaders as to their proposals for the bill to create a live stock commission and regulate the packing plants (S. 3944; Senate Report 429). This measure passed the Senate January 24 and the House Report (No. 1297) was made February 5, but it was not allowed to be considered.

## LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

**Administrative Reorganization in Ohio.** A joint legislative committee on administrative reorganization was established in Ohio in 1919, with Senator Frank E. Whittemore as chairman. This committee organized an investigation of the existing administrative system in Ohio, which was conducted under the general supervision of Mr. Don C. Sowers, director of the Akron Bureau of Municipal Research. The results of the investigation were published in a series of about seventy-five or eighty small pamphlets, and a summary of the recommendations involved in these separate pamphlets was embodied in a pamphlet summary. A good deal was accomplished by this investigation, and Governor Harry L. Davis made his campaign for nomination and election to the governorship in 1920, largely on the program of state administrative reorganization.

When Governor Davis came into office no specific work had, however, been done upon a comprehensive single plan, and no details of a bill had been worked out. Messrs. George E. Frazer and Walter F. Dodd of Chicago, and Prof. Clarence D. Laylin of the Ohio State University, were engaged by Governor Davis and the legislative committees in charge of this matter, to assist in obtaining agreement upon a definite program and in drafting this agreement in the form of legislation. An act to establish an administrative code, embodying the results of the work outlined above, was approved by the governor on April 26, 1921. This act contains an emergency clause excepting it from the referendum, and was adopted by more than two-thirds vote of the two houses. The constitutionality of the emergency clause has been sustained by the supreme court of Ohio.

The administrative code of Ohio does not touch the constitutional offices of lieutenant governor, secretary of state, auditor of state, treasurer of state, and attorney general. It does not affect what is perhaps the most serious constitutional difficulty in Ohio from the administrative standpoint, the two year term of governor. It is well recognized both in Ohio and elsewhere that the governor cannot effec-

tively conduct a state administrative system if there must be a change or the possibility of change in the governorship each two years.

An outline is given below of the departments organized by the Ohio administrative code and of the work assigned to each of these departments:

Department of Finance: budget, financial control, purchases and printing, tax commission.

Department of Commerce: supervision over banks, building and loan associations, state fire marshal, insurance, inspection of oil, supervision over securities, public utilities.

Department of Highways and Public Works: work of present department of public works, highways, state architect and engineer, supervision over purchase of real estate, planning of all building construction, custody of capitol building and grounds.

Department of Agriculture: animal industry, fish and game, foods, and dairies, plant industry, state fair.

Department of Health: All of the present health activities of the state.

Department of Industrial Relations: All of the present activities of the industrial commission, including factory inspection, labor, statistics, mines, workmen's compensation.

Department of Education: general supervision over professional licensing boards, film censorship, all of the present work of the department of education, libraries. The director of education is made ex-officio a member of the board of trustees of each of the normal schools and of each of the three universities, and also a member of the board of trustees of the Ohio archaeological and historical society.

With respect to the educational organization, each of the normal schools and each of the three universities is left with its independent board. A coördination among the several institutions is sought by making the director of education ex-officio a member of each of these boards. In the past the Ohio agricultural experiment station has been under a board independent of the trustees of the Ohio State University. The administrative code provides that the board of control of the state agricultural experiment station shall consist of the director of agriculture and the members of the board of trustees of the Ohio State University, and thus seeks to bring about a closer coördination of these related activities. Aside from the addition of the director of education as an ex-officio member of the Ohio State University, no changes have been made in the governing body of that university. The board of

trustees of Miami University and the boards of normal schools have been left substantially as they were, except for the addition of the director of education as ex-officio a member of such boards. The board of trustees of the Ohio University has been reduced to seven members (with the director of education an additional ex-officio member). It was thought unwise in connection with the Ohio reorganization to consolidate completely the control of higher educational institutions.

The tax commission of Ohio, the industrial commission, and the public utilities commission, are left with their present membership, and with members having overlapping terms. In the contemplation of the act these commissions are to be entirely independent in the performance of their quasi judicial functions, but are to be parts of their respective departments for administrative matters. In order to carry out this plan the director of finance is secretary of the tax commission, the director of commerce is secretary of the public utilities commission, and the director of industrial relations is secretary of the industrial commission.

For the headship of the department of education and of the department of highways and public works constitutional officers are designated. By the constitution of Ohio there is an officer appointed for four years and known as the superintendent of public instruction. The superintendent of public instruction, although appointed by the governor, serves for twice the term of the governor. In spite of this, however, it was thought best to consolidate all of the educational work of the state under the superintendent of public instruction as director of education. In the state of Ohio there is also a constitutional officer known as superintendent of public works, appointed by the governor for the term of one year. The superintendent of public works under the Ohio administrative code becomes the director of the department of highways and public works.

The most distinctive features of the Ohio reorganization are the following:

1. The development to a greater extent than in any other state of the theory that administrative work should be conducted by single heads of departments. The three important commissions mentioned above have been continued, but their administrative work has been to a much greater extent than in other states coördinated with the departments created by the administrative code. In line with the view herein suggested, the Ohio reorganization act provides for few



boards even of an advisory character, but authorizes the departments with the consent of the governor to create such boards in cases where it may be deemed desirable.

2. In direct line with what has been suggested above, the heads of divisions within each department are made appointive by the heads of such departments rather than by the governor. That is, to a much greater extent than in any other state the head of each department is in command of the work of that department. One important exception to this statement may be noted. The division of banks in the department of commerce is more distinctly independent of the department of commerce than are the other administrative divisions of that or of any other department. This independence consists primarily of the fact that the head of the division of banks is appointed directly by the governor.

3. The governor is given complete command over the heads of his departments, each director holding his office during the pleasure of the governor.

Another important element in the Ohio reorganization is that by which all of the library activities of the state are placed under the department of education. A state library board is created to be composed of the director of education and of four other members to be appointed by the governor, and it is hoped that a dignified and effective position will through the new organization be given to the library services of the state.

Governor Harry L. Davis both in his campaign and after his election was the chief factor in bringing about the reorganization of the state administration of Ohio, and this reorganization is perhaps the most effective yet planned in this country, except for the fact of the constitutional limitation of the governor's term. In connection with this reorganization, Governor Davis had the loyal coöperation of the house and senate committees on administrative reorganization, and great credit for the enactment of this legislation is due to the members of these committees, and particularly to the chairmen, Senator Wallace W. Bellew, and Representative Robert C. Dunn.

W. F. D.

**Administrative Reorganization in Missouri.** In Missouri, Governor Hyde made the consolidation of state administration one of the foremost features of his legislative program. Seven distinct measures were introduced, of which all, except the one providing for a consolidation of the boards governing the state teachers' colleges, were passed.

One act creates a single bipartisan board of six members in place of the separate boards in control of the six eleemosynary institutions. Another measure establishes the office of supervisor of public welfare to take over the functions previously exercised by the following officials: food and drug commissioner, state inspector of oils, state beverage inspector, and state inspector of hotels.

An act creating a department of labor abolishes six separate offices and boards, and a new department of agriculture was created to take over the duties which had been previously exercised by seven different bodies. Another act creates a department of finance to exercise the duties of the existing bank commissioner and the supervisor of building and loan associations.

The sixth act, which establishes the department of budget, is not strictly a consolidation measure. The department takes over the functions of the state tax commission. It prepares a tentative state budget for the governor, who passes upon it finally before submitting it to the legislature. A bureau of purchase established in the department of budget has supervisory functions regarding purchases and contracts of state departments and institutions.

Considerable opposition developed to all of these measures, except the one relating to the eleemosynary institutions, and they were passed by practically a strict party vote. The state Democratic committee has decided to invoke the referendum on five of the consolidation bills, as well as on certain other measures, and petitions are being circulated for this purpose. If the necessary number of signatures are secured to the referendum petitions, they will be suspended until the November election, 1922, unless a special election is ordered.

ISIDOR LOEB.

*University of Missouri.*

**The New York State Legislative Session of 1921.** April sixteenth closed one of the most remarkable sessions of the New York legislature in the history of that state. The session was notable for the complete domination of Governor Nathan L. Miller; for its program of economy and retrenchment; and for its breadth of legislation.

The legislature was composed, in the senate, of forty Republicans, ten Democrats, and one Socialist; in the assembly, of one hundred and eighteen Republicans, twenty-nine Democrats and three Socialists. With this tremendous majority with which to work, Governor Miller

forced through his legislative program almost in its entirety. Splits and opposition in his party did not offer serious difficulties, because the "bolters," realizing the futility of opposition, swung into line and followed the masterful leadership of the governor. Legislative leaders, after conferences with him, changed their front and aided the program.

Faced with estimated appropriations of \$200,000,000 for the state expenses, Governor Miller used all his power to keep within the 1920 expenditures. To do this it was necessary to cut off many unnecessary boards and commissions, and it is estimated that 2,000 sinecures have been abolished. The final budget calls for \$135,000,000, a decrease of six million from that of 1920. This is a record which will receive much favor among the taxpayers of the state. The legislature added a thousand laws and amendments to statutes and in the closing hours, over a hundred bills were passed. This is not in itself any claim to superiority over other legislatures, but the quality of the legislation passed is evidence of the valuable work accomplished.

A bill to reorganize completely the state administration was killed, but many steps toward reorganization were taken. The tax collection agencies of the state were consolidated into a state tax commission, or department, composed of three members. This body will have charge of the collection of the income tax, the corporation tax, the automobile tax, the stock transfer tax, and the mortgage tax. This is definitely a move in the right direction, to collect these scattered activities under one head and to centralize their control. The industrial commission was abolished and a single commissioner provided to carry on the work. The same policy was pursued in connection with the council of farms and markets. The two public service commissions of the state were abolished and in their places was created a transit commission for New York City, and a public utilities commission which has sweeping powers, the law abolishing all existing franchise agreements between municipalities and public service corporations. The state boxing commission was changed to a state athletic commission with power over wrestling as well.

Among the agencies abolished as a part of the program of economy were the state excise commission which had charge of liquor licenses; the commission on narcotic drug control; the military training commission; and the state superintendent of elections. A board of estimate and control was created, composed of the governor, the comptroller and the chairmen of the senate and assembly finance committees. This board has power over the conduct and expenditures of the state

departments including the right to investigate them. A state water power commission will open the vast water power resources of the state, with rates under the control of the public utilities commission, the development to be by private corporations and individuals. A state motion picture censorship will approve all pictures produced or exhibited in the state and a tax will be imposed on the films.

A policy of state enforcement of prohibition was adopted. The state bonus commission was organized to distribute the bonus to veterans of the World War and veterans were given preference in civil service rating.

The Levy Election Law which introduced the direct primary was amended and the party convention has been restored for the nomination of state and judicial officers. Delegates to this convention will be named at the direct primary. This was passed at the demand of the Republicans and was a part of the platform in the 1920 campaign, the Democrats opposing it vigorously.

The literacy test for voting will be submitted to the electorate at the fall elections as an amendment to the constitution. This test would require that every voter be able to read and write English.

This summary of the more important measures passed shows the extent of the work of the legislature, and in general the laws will be of benefit to the state. The movement for retrenchment, the abolition of unnecessary positions and the reorganization of various state departments, the whole program in fact, is the result of the political sagacity, leadership and personality of the governor.

F. G. CRAWFORD.

**Popular Legislation in California, 1920.** California has again been the scene of a great act of popular legislation. At the general election in November 1920, in addition to expressing their opinion on candidates for President of the United States and numerous other national, state and local officers, the people of California were called upon to judge of the merits of twenty proposals of law.

Ten of the measures were placed on the ballot by initiative; five were constitutional referenda, and five were referenda by petition; twelve of the twenty measures proposed amendments to the constitution, five coming from the legislature and seven from the people by initiative. Of the initiative measures three were adopted and seven were defeated. Of the referenda by petition, two were adopted and three were defeated. Of all the twenty measures taken together eight were adopted and twelve were defeated.

It is possible to draw useful conclusions from the fate of these measures. It was at one time supposed by advocates of the initiative and referendum that the initiation of a measure by petition argued a degree of popular interest which gave it a good chance of victory. This election reverses such a conclusion. As a matter of fact, as we shall see when we come to analyze the particular measures, the initiative was in this case taken advantage of by numerous special interests for the purpose of proposing measures of particular advantage to themselves or for the propagation of their particular "isms." To these special pleas the people of the state did not lend a kindly ear. It has been usually thought that the filing of a referendum petition indicated a widespread hostility to the measure in question. This contention is somewhat supported by the result of the California election. Two of the legislative acts submitted to referendum were measures of very great importance which were the subject of intense public feeling. Three of them were special measures attacked by special interests. Both of those adopted fell in this latter group. The constitutional referenda met, as might have been expected, a somewhat better fate. Little significance, however, can be attached to the results of the measures in this category because of the fact that, with one exception, they were matters of very trivial importance. At least eight of the twenty measures were by reason of their complexity or the trivial character of the issues involved entirely unsuited to popular determination.

The people of California have a deserved reputation for liberality. They sustained it at this election. Of six measures tending either directly or indirectly to increase taxes they adopted four. One of these was a measure increasing the amount now paid by the state in support of education in high and elementary schools from \$17.50 to \$30 per pupil. This will involve an immediate increase in expenditure on the part of the state of between seven and eight million dollars. Another important measure in this class was that increasing the rate of interest to be paid upon forty million dollars of highway bonds unsaleable at present rates of interest, and also providing that the state assume the burden now borne by the counties for the payment of interest on previously issued highway bonds. This measure, too, was adopted by a large majority. On the other hand, a measure increasing the salaries of justices of the supreme court and the district courts of appeal by \$2000 a year, involving a total expenditure of \$44,000, was defeated by a vote of over two to one. The people thus

affirmed once more their implicit faith in small salaries. The state adopted a measure exempting orphanages from taxation and extended the limits within which state aid might be granted to private charitable institutions, both matters of small consequence. An initiative measure proposed by the alumni of the University of California to place a tax on general property of one- and two-tenths mills on the dollar was defeated by a very narrow margin. The campaign for this measure was vigorous and the opposition was equally intense. The grounds for the opposition were that the measure broke down the system of apportionment of state and local taxation which prevails in California and that the funds to be derived from the mill tax were to be outside the control of the legislature and the state board of control. It was the arguments, rather than the amount of the tax which led to the defeat of the measure.

Among the initiative measures was one providing for the introduction of the single tax. This is the fourth successive measure at which a similar measure has appeared on the ballot. It has been defeated heavily, this time by a vote of 196,000 for to 140,000 against. A primarily agricultural state like California is probably the least fruitful soil in the world for the single tax doctrine. The constant reappearance of this measure, however, on the ballot indicates the real estate men of the state to propose by initiative a measure raising the percentage of voters who must sign an initiative petition from eight to twenty-five in the case of measures affecting taxation. This proposition was defeated by a vote of nearly two to one.

Three initiatives and one referendum by petition affected medical matters. One was a measure prohibiting compulsory vaccination, another prohibiting vivisection, a third establishing a separate board of chiropractic examiners. The fourth was a referendum upon regulating the use of narcotic drugs which it was alleged was being sold to the practitioners of osteopathy. The medical and scientific community of the state delivered a united attack upon these propositions under the name of the "Quack Quartet." They were successful, the three initiatives being defeated and the proposition subjected to referendum carrying. The chiropractic measure came within about twelve thousand votes of passing. On the whole the people of California show a commendable disposition to follow the leaders of scientific thought within this field.

Chief interest outside of California has attached to the Anti-Saloon Land Law which was proposed by initiative and which was a

by a vote of 668,483-222,096. This measure was intended to make effective the anti-alien land law passed by the legislature in 1913. It continued the prohibition of the earlier law of the ownership of land by aliens ineligible to citizenship. In addition it forbade any such alien to hold land as a trustee or guardian for the minor child of such alien, even though such minor child be a citizen of the United States, or to be a member of a corporation authorized to acquire or enjoy agricultural land. The act further provided that any conveyance with intent to evade the provisions of the act should be void as against the state and that taking property in the name of another person when the consideration was actually paid by an alien ineligible to citizenship or the execution of a mortgage to such an alien if the mortgagee put in possession should be prima facie evidence of such intent.

Few persons really closely in touch with the subject believe that this measure can prove effective. Many voted against it believing that it was a gratuitous, because useless, affront to our trans-Pacific neighbor. There is, however, substantial agreement among Californians that the matter of Japanese ownership of agricultural land has become a serious problem and that to avoid the consequences which are involved in so-called race questions, Japanese immigration should be promptly checked. The vote, therefore, was very significant as indicating the attitude of California toward the Japanese question in general and may, to that extent, help to point the way toward some adequate treatment of the problem by the national government.<sup>1</sup>

Perhaps the most interesting contest was between the women and the lawyers over the community property act (a referendum by petition). This act attempted to put husband and wife on a "fifty-fifty" basis as far as the testamentary disposition of property is concerned. California derived from her Spanish settlers the Roman law principle that husband and wife are partners. Coming into conflict with the common law theory that they are one and the husband that one, a compromise was evolved which prevails in California today. Upon the death of the wife all community property, that is property accumulated other than by gift or bequest during their married life, goes to the husband. On the death of the husband one-half goes to the wife, the other half being subject to the testamentary disposition of the husband. Failing

<sup>1</sup> Another measure affecting aliens adopted by almost the same vote, apparently under the impulse generated by the larger measure, was a poll tax of four dollars on every alien inhabitant. It was opposed by most thoughtful people on the ground that it was an unworthy and trivial insult to the Japanese. Their advice, however, was passed by unnoticed.

Each disposition this half goes to the husband's descendants. The act passed by the legislature under vast pressure from the women's lobby provided that on the death of either spouse one-half of the community property should go to the other while the other half might be the subject of disposition by will to the lineal descendants of the testator but not to others except with the consent of the spouse. In the absence of a will the whole community property was to go to the surviving spouse. To this measure the lawyers objected with extraordinary violence and very marked success. They argued that every partnership must be liquidated following the death of a married partner, that the credit of married men would be diminished, that a husband could not without his wife's consent leave a penny to his own parents. These arguments prevailed.

More sinister but equally destructive were the arguments addressed by the opponents of prohibition against the Harris Enforcement Act which they had subjected to referendum. The vote on this measure indicates the extent of the reaction against prohibition in this wine-producing state. It is less marked than might have been expected. The vote stood 400,475 for and 465,537 against.

Finally, the people passed upon a proposition for a constitutional convention. There is no denying that California needs a new constitution. It was already unduly long when it used to be carried in the appendix to Bryce's *American Commonwealth* as an example of a bad constitution. It is much worse today. No one has a kind word for it. The calling of a convention was, however, opposed by many of the most earnest critics of the constitution on the ground that the present was no time for a convention. This argument was accepted by conservatives who anticipated a radical convention and by progressives who dreaded a reactionary one. The call was overwhelmingly defeated.

On the whole the task required of the people was an impossible one. The pamphlet sent to the voters to acquaint them with the texts of the measures and arguments pro and con was a slight thing of 80,000 words. There was a good deal of agitation of some questions. The newspapers published strange and conflicting suggestions for voters. When all was said and done most electors voted blindly on all but two or three questions. They doubtless acted on advice but advice so conflicting as to largely neutralize itself. The long ballot of propositions is no less fatal than the long ballot of officers.

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**The Nebraska Constitutional Convention, 1919-1920.** The "Grasshopper Constitution" has been the local name of the Nebraska organic state document. It was adopted November 1, 1875. Most of the material in it can be clearly traced to the Illinois constitution of 1870. It was called "Grasshopper Constitution" because in 1874 Nebraska and the entire Missouri region was invaded by billions of flying Rocky Mountain grasshoppers, which ate the settler's crops and then laid their eggs at the rate of about one hundred and fifty eggs for each female grasshopper. These eggs were hatching in the spring of 1875 when the Nebraska constitutional convention met, and the hard times and frontier economic philosophy found expression in that document.

The constitution of 1875 contained the usual limitations of that period. It forbade the creation of new executive offices. It required a general property tax levied equally by value upon all kinds of property. It required every bill in the legislature to be read at large on three different days. It prohibited the payment of any money for clerk hire in the offices of the attorney-general and the state superintendent. It could be amended only by a majority of all the electors voting at a general state election or by calling a new constitutional convention.

Efforts to amend this constitution were mostly futile, because of the last provision. In forty years thirty-eight amendments were submitted, most of them without serious opposition. Only ten of them were adopted, and of these, five were "counted in" by various devices such as making the proposed amendment part of the party ticket and counting all straight votes therefor.

The definite movement for a constitutional convention in Nebraska began about 1897. An overwhelmingly Republican legislature in 1895 had submitted twelve amendments to the constitution. A number of these were designed to give future legislatures power to create new state offices and to fix salary schedules. In order to overcome the requirement that a majority of all the votes cast at the election should be in favor of these twelve amendments, a legislative act provided a special ballot and a separate ballot box in each precinct for the vote upon constitutional amendments—the design being to count only those voting in such ballot boxes. It was an ingenious method of getting around the provision of the constitution which required a majority of all the electors voting to adopt an amendment. It was the expectation that a Republican legislature and Republican state

officers would canvass the vote and that Republicans would fill the new state positions and receive the new salaries. These amendments were submitted at the general election of 1896. The Bryan movement—fusion between the Populists and Democrats—carried the state that year, electing every state officer and a large majority in both houses of the legislature. Each one of the twelve amendments submitted received a majority of the votes cast upon the proposition. None of them had a majority of those voting for president and state officers at the general election. When the fusion legislature met, a recount of the votes was ordered for the purpose of counting the amendments in and securing officers and salaries for their friends. This gave rise to a violent party controversy, which ended in the defeat of all the amendments, and also ended the efforts to reconstruct the constitution by the separate amendment method, directing future efforts on the part of those sincerely desirous of securing constitutional changes toward the calling of a constitutional convention.

Each legislative session from 1897 to 1917 witnessed a struggle between the progressive and conservative elements in the state upon the calling of a constitutional convention. The larger business interests of the state, especially the railroads and the liquor interests, feared the possibilities of a new constitution and steadfastly opposed the movement in each legislature. They were able to block the movement until the session of 1917. Meanwhile, an initiative and referendum amendment to the constitution had been adopted in 1912, and in 1916 a prohibition amendment. The latter broke the power of the conservative combination of forces, and the legislature of 1917 submitted the proposition for a new constitutional convention. This was approved by the voters at the election of November, 1918. The legislature of 1919 passed an act for the convention and its expenses ordered by the popular vote. The act provided for one hundred delegates, to be chosen at a special election in November, 1919, in the same manner and from the same districts as representatives to the lower house are chosen to the legislature, excepting that candidates should be nominated by petition and placed upon the ballot without party designation.

Freed from the party lines in the selection of members of the constitutional convention the natural division of society into progressive and conservative groups appeared. A "Progressive League" was formed with state-wide membership. A "New Nebraska Federation" was the reply of the conservative element. The lines of division were

not sharply drawn. In some counties there were no opposition candidates, in others there was no material difference in the personal platforms put out by rival candidates. In still others there was active rivalry both of candidates and of principles. When the smoke blew away it at once became apparent to persons familiar with the state that about forty members chosen could be classed as conservatives, about thirty as progressives, and that the remaining thirty were not easily assignable to either group. The sequel disclosed, however, that a majority were clearly conservative, but some of that majority were not always dependable to follow the leadership of the more pronounced conservatives.

The convention met in Lincoln December 2, 1919. It elected a middle ground Republican as president, a progressive Democrat as vice-president. The policy of the majority as it developed had two leading points:

- (1) Few changes in the old constitution, none fundamental so far as framework of government.

- (2) Conciliation of rival views and interests so far as possible, to prevent defeat when the amended constitution was submitted to possible vote.

The convention continued in session, with occasional recess, until March 25, 1920, when it completed its work of framing forty-one amendments to the constitution of 1875, and provided for their submission as separate propositions to the voters at a special election to be held September 21, 1920. The convention then took a recess until October 19, 1920, for the purpose of meeting any defects which the discussion of its propositions might develop and also to provide for rewriting the 1875 constitution and incorporating such amendments therein as might be adopted by the people at the September election. For this purpose, a special committee was appointed to act after the results of the election were known.

It was further provided by the convention that women might vote in separate ballot boxes upon the adoption of the amendments submitted. This proposition was strongly opposed by some of leading lawyers of the convention, because at that time the amendment to the Constitution of the United States conferring suffrage upon women had not been ratified by thirty-six states nor incorporated as a part of the federal Constitution. There was also submitted at the special election, Proposal Number 18, conferring equal suffrage on women,

and it was argued that it was absurd to permit women, excluded by the constitution of 1875 from the general ballot, to vote upon the question of striking out the word "male" from that constitution. Nevertheless, the spirit of the times and the desire to show friendliness toward the women citizens was so strong that the proposition prevailed and women were permitted to vote in separate ballot boxes throughout the state and their votes were duly canvassed.

Every one of the propositions submitted was adopted, forty of them having a majority of both the men and women voting. One of them, number 6, which gave the legislature power to increase the membership in the state senate from thirty-three to fifty members, was defeated by the men voters by over 2000 votes, but approved by the women by over 4000 votes and became a part of the new constitution.

Four changes of first rank were submitted to the people by the convention, viz:

(1) Amendments to the constitution when proposed by the legislature will hereafter be adopted by a majority of those voting on the question—provided the affirmative vote equals 35 per cent of the total vote cast.

(2) Providing that new executive officers may hereafter be created by a two-thirds vote of the legislature.

(3) Permitting classification of intangible property for taxation and the levy of other taxes than property taxes. (This is to permit a state income tax).

(4) Providing for the creation of an industrial commission to administer laws relating to labor disputes and profiteering.

Each of the above provisions changes or permits change in the larger aspects of government. Of these the most important no doubt is that which makes the constitution amendable through the method of legislative submission by a majority of the electors who have enough intelligence and interest to vote for or against the proposition submitted.

In the rank of second importance among the changes made may be included the following:

(5) The English language is made the official language of the state and the only medium of instruction in common schools public and private.

(6) Alien property rights are made subject to regulation by the legislature instead of being guaranteed the same treatment as those of resident citizens.

(7) Election by single districts of members of the legislature, regents of the state university and judges of the supreme court outside of the chief justice.

(8) Coöperative corporations may be organized upon the basis of one man one vote.

(9) Minimum wage and conditions of employment of women and children may be established by the legislature.

(10) School lands may be sold only at public auction. The legislature may provide by law for such sale. (The present law forbids their sale in any manner except small tracts for special purposes).

As significant as anything were the negative results of the convention—the subjects refused submission to the electors. Among these deserving mention are the following:

(1) Short ballot and commission form of state executive government. The commission form of state executive government was rejected by a test vote 36 for and 57 against. The short ballot, providing practically for a governor who should appoint the other executive officers was rejected without a roll call, apparently not having ten members willing to demand a roll call on that question.

(2) Initiative and referendum. A test vote on the question of making the required number of petitioners 7 per cent instead of 10 per cent was carried by a vote of 48 for and 36 against. The principal argument offered for reducing the percentage was the doubling of the vote by the addition of women to the electorate. This was one of the significant test votes, showing that a considerable number of conservative members of the convention had been converted to the soundness of the initiative and referendum principle and were not willing to make its application more burdensome by the expense of securing petitioners.

(3) The question of taking private property for private use gave rise to one of the most interesting debates of the convention. The practical question involved was that of making it possible to condemn right of way for roads, irrigation or draining ditches across land in order to benefit other tracts of land. Upon a motion to indefinitely postpone the vote was 37 for and 58 against. The matter was then referred to a committee and finally omitted from the amendments submitted by a test vote of 34 for to 47 against.

(4) Upon test vote permitting classification of tangible property for taxation the vote was affirmative 33, negative 57. The fear of "single tax" legislation which would make land holding unprofitable

was a strong factor here. Many of the members of the convention own large tracts of farm land and did not hesitate to express their fears.

Three other questions—subjects of heated controversy today—were strongly debated by the convention and refused submission to the people; jury trial in contempt of court cases; land ownership; wider range of state ownership.

Jury trial in constructive contempt cases was rejected on test vote—28 for, 66 against.

The land ownership question took the form of a proposal for a state revolving fund to provide for purchase of land by the state and its sale on long time to persons wishing to avail themselves of the privilege. This proposal was a favorite idea of Mr. Charles H. Cornell, a banker of Valentine, a strong Republican and classified as a conservative. He read a carefully prepared speech covering the subject of land legislation in other countries. The proposition was defeated—yeas 36, nays 52.

Extension of state ownership came up in the form of an amendment to that part of the Nebraska constitution which limits state debt to \$100,000. Mr. Sughroue, a non-partisan league farmer from Red Willow County, proposed the provisions of the present New York state constitution, permitting state debt up to two per cent of assessed valuation. This was rejected by a vote of 21 for and 70 against. Another amendment by Mr. Peterson of Lancaster County, a leading lawyer and generally classified as a conservative or moderate progressive, providing for an arrangement similar to that by which a city now guarantees the payment of district paving bonds and undertakes the collection of taxes for them, was at first approved. Then the whole subject was referred back to a special committee of seven, by a vote of 54 to 35. The committee of seven struck out the vital parts of the amendment, and the convention then threw the whole subject overboard, leaving the present limitation on state debt.

A proposal for a one house legislature was championed by Mr. Norton of Polk County, a former Populist and active in farmer's organizations. A resolution by him favoring the separate submission of such a proposition was defeated by a vote of 43 to 43.

Summarizing the work of the Nebraska Constitutional Convention it may be said:

1. That conservative elements dominated.

2. That the debates and test votes indicate growth of sentiment for reconstruction of state government.

Nebraska is a composite conservative state. One of the factors in this is the fact that the population is about one half of long time American ancestry. The other half is composed about equally of persons of German, Slavic and Scandinavian ancestry, either born in Europe or children of those so born. Such a population moves slowly toward agreement upon changes in government.

The conflict between localism and centralization is strenuous in Nebraska. Upon vital points, such as roads and schools, administration tends toward the state capital. Taxes increase (they have more than doubled on the average Nebraska farm in the past three years, while the tax-paying power of the farm product is less than half of what it was a year ago). As one Nebraska farmer said: "If this process keeps on our part in the government in a few years will simply be paying taxes."

The campaign on the proposals submitted lacked interest. Only about one-sixth of the voters—men and women—went to the polls. There was little press discussion. Most of the amendments were regarded as unimportant and that feeling extended to the others.

The stenographic reports of the debates is in print, forming two large volumes of 1500 pages each.

Pursuant to its adjournment on March 25, the constitutional convention reassembled in final session in Lincoln, October 19, 1920. A revised text of the constitution with the approved amendments incorporated was reported by I. L. Albert, chairman of the committee on phraseology and arrangement, and this was approved by the convention as the official text of the Nebraska constitution. After the transaction of some incidental business, the convention adjourned *sine die*. In accordance with its action, the secretary of state has prepared and published the revised text of the Nebraska constitution in pamphlet form. It is also printed in the Nebraska *Blue Book* for 1921 and in other state documents.

ADDISON E. SHELDON.

*Lincoln, Nebraska.*

## VOTE ON CONSTITUTIONAL AMENDMENTS, SEPTEMBER, 1920

AMENDMENT NUMBER	MEN		WOMEN		TOTAL		TOTAL VOTE
	For	Against	For	Against	For	Against	
1	48,743	15,400	15,807	2,434	64,550	17,834	82,384
2	49,619	13,363	16,302	1,860	65,921	15,223	81,141
3	52,111	2,089	17,515	1,535	69,626	13,624	83,250
4	42,879	16,862	13,667	2,972	56,046	19,734	75,780
5	45,185	16,899	14,309	3,183	59,494	20,082	79,576
6	30,153	32,266	10,930	6,472	41,083	38,738	79,821
7	42,239	17,094	14,064	2,659	56,333	19,753	76,086
8	39,425	15,105	13,048	2,309	52,473	17,414	69,887
9	47,973	12,909	15,602	1,594	63,575	14,503	78,078
10	49,250	13,996	16,149	1,965	65,399	15,961	81,360
11	51,859	9,910	16,154	1,254	67,513	11,164	78,677
12	44,439	11,442	14,396	1,378	58,835	12,820	71,655
13	45,391	14,168	15,093	1,942	60,484	16,110	76,594
14	43,653	15,542	14,483	2,254	58,136	17,796	75,932
15	42,751	13,844	13,583	2,064	56,334	15,908	72,242
16	49,836	10,885	15,306	1,559	65,142	12,444	77,586
17	44,073	17,051	12,839	4,302	56,912	21,353	78,265
18	47,471	14,462	18,012	954	65,483	15,416	80,899
19	54,763	7,605	17,216	1,081	71,979	8,686	80,665
20	49,923	10,505	16,117	1,356	66,040	11,861	77,901
21	51,282	11,958	15,261	2,445	66,543	14,403	80,946
22	42,119	17,235	12,743	3,973	54,862	21,208	76,070
23	54,725	13,242	15,270	2,123	60,995	15,365	76,360
24	49,873	11,734	17,040	1,465	66,913	13,199	80,112
25	44,015	14,723	15,009	2,361	59,024	17,084	76,108
26	44,903	13,489	14,202	2,072	59,105	15,561	74,666
27	52,492	10,793	16,411	1,798	68,903	12,591	81,494
28	48,454	12,861	15,009	1,831	63,463	14,692	78,155
29	41,771	15,371	13,768	1,994	55,539	17,365	72,904
30	47,658	11,218	14,118	1,769	61,776	12,987	74,763
31	45,250	13,495	13,821	2,047	59,071	15,542	74,613
32	47,828	9,721	14,254	1,307	62,082	11,028	73,110
33	44,735	11,648	13,847	1,808	58,582	13,456	72,038
34	49,612	8,608	14,831	1,093	64,443	9,701	74,144
35	49,265	8,388	15,088	1,056	64,353	9,444	73,797
36	53,576	6,502	16,285	875	69,861	7,377	77,238
37	51,221	9,095	16,792	1,223	68,013	10,318	78,331
38	43,219	18,263	14,285	3,210	57,504	21,473	78,977
39	45,735	12,736	14,509	1,919	60,244	14,655	74,899
40	46,544	13,254	14,849	2,256	61,393	15,510	76,903
41	40,982	12,721	13,712	1,541	54,694	14,262	68,956



*Subjects of Proposals submitted by the Constitutional Convention of 1980*

- No. 1. Authorizes five-sixths jury verdict in civil cases.
- No. 2. Permits regulation by law of property rights of aliens.
- No. 3. Declares English official language of the state and requires common school branches taught therein.
- No. 4. Initiative and referendum. Reduces percentages in number of signatures required.
- No. 5. Separate district legislative apportionment.
- No. 6. Permits increase of state senators from 33 to 50.
- No. 7. Increases legislative salary from \$600 to \$800.
- No. 8. Majority of all members elected (yea and nay vote) required to adopt conference reports between two houses. First and second reading of bills by title only.
- No. 9. Prohibits appointment of members of legislature to state offices.
- No. 10. Prohibits raising salaries during term of office.
- No. 11. Reserves mineral rights in state lands.
- No. 12. Eliminates obsolete 1875 legislative apportionment.
- No. 13. New executive offices may be created by two-thirds vote of legislature; executive budget; a board of pardons; five years residence required for eligibility to office of governor.
- No. 14. Creates office of tax commissioner.
- No. 15. New jurisdiction and procedure of courts.
- No. 16. Concurrence of five judges of the supreme court to declare laws unconstitutional.
- No. 17. Election of judges of the supreme court by districts.
- No. 18. Woman suffrage.
- No. 19. Soldier suffrage.
- No. 20. Temporary school fund—distribution.
- No. 21. Prohibits sale of school lands except at public auction.
- No. 22. Election of university regents by districts.
- No. 23. Prohibits state aid to sectarian institutions.
- No. 24. Raises age for commitment to industrial schools from 16 to 18.
- No. 25. Provides board of education for normal schools.
- No. 26. Requires uniform and proportional taxes on tangible property and franchises; permits classification of other property and permits taxes other than property taxes.
- No. 27. Tax exemptions, including \$200 of household goods to each family; forestry exemptions changed.
- No. 28. County tax limit fifty cents on one hundred dollars actual valuation.
- No. 29. Changes of county boundaries.
- No. 30. Public utility corporations to report to railway commission.
- No. 31. Prohibits consolidation of competing public utility corporations without permission of railway commission.
- No. 32. Regulates stocks and dividends of public utility corporations.
- No. 33. Permits metropolitan cities to adopt present charter as home rule charter.

- No. 34. Insures coöperative features in certain associations and permits limitation of shares and voting. Regulates foreign corporations. Stocks and bonds to issue only for actual value.
- No. 35. Defines priority rights in water.
- No. 36. Protects public rights in use of water power.
- No. 37. Minimum wage and conditions of employment of women and children.
- No. 38. Permits creation of industrial commission to administer laws relative to labor disputes and profiteering.
- No. 39. Provides that amendments to the constitution submitted by the legislature shall be adopted by a majority voting on the question if the affirmative vote be equal to 35 per cent of the total vote cast.
- No. 40. Fixes increased salaries of state officers including judges of the supreme and district courts, effective until changed by the legislature (not oftener than once in eight years).
- No. 41. Eliminates obsolete provisions and provides a continuing schedule.

**The Tenth New Hampshire Convention.** Provision was made in 1915 for placing before the voters of New Hampshire the question of calling a constitutional convention; the voters gave their approval in 1916, the convention was elected in 1917, and met for the first time in June, 1918. After organization and one day's debate the convention decided to adjourn awaiting the quieter times of peace, and from June 7, 1918, to January 13, 1920, all of its work was suspended. Upon reconvening, the convention devoted its attention almost exclusively to certain matters prepared by its leaders and adjourned on January 30, 1920, after a session of only seventeen working days.

Subsequent to the failure of all of its proposals at the polls November 2, 1920, the convention met for a third session on January 28, 1921<sup>1</sup>, and voted to resubmit three of the defeated articles and a new proposition. These were in turn rejected by the voters March 8, 1921.

The convention was elected to deal with two main propositions, one relating to finance, the other concerning the reduction of the size of the house of representatives. The interpretation by the state supreme court of the constitutional rule of proportion in the levy of taxes has made it impossible for the legislature to tax growing wood and timber at a less rate than other property, has thrown an income tax out of the realm of practical matters, and, until the legislature in 1919 took a leap in the dark<sup>2</sup>, crippled the employment of an inheritance

<sup>1</sup> Adjournment in January 1920 had not been *sine die*, but at the call of the president of the convention, or the governor of the state. Honorable Albert O. Brown, president of the convention, was elected governor, November 1920.

<sup>2</sup> Opinion of the Justices, 76 N. H. 597 (1911); *Laws*, 1919, ch. 37.

tax. The state has consequently been forced to rely chiefly on the general property tax for its revenue, and, unable to escape the enormous pressure for increased expenditures, has long since found the general property tax inadequate. The state stands in urgent need of additional sources of revenue. The convention of 1912 recommended to the voters amendments empowering the legislature specially to assess, rate, and tax growing wood and timber and money at interest, to impose a graduated income tax, and to correct an ambiguity in the inheritance tax amendment adopted in 1903. These propositions were rejected by the voters. There was however a strong sentiment in favor of an income tax and an inheritance tax graduated according to the amounts passing; and the recent convention approved after a very brief consideration proposed amendments authorizing both a graduated income tax and a graduated inheritance tax.

After accepting a proposed amendment establishing the item veto, the convention proceeded to consider the perennial New Hampshire problem of reducing the size of the house of representatives. An ingenious scheme received the approval of both town and city delegates. The size of the house was to be diminished from its present figure, about 408<sup>3</sup>, to a number not less than 300 nor more than 325. The existing geographical basis of representation, the town and ward, was to be retained. Representation however was to be in proportion not to population, but to the average total number of ballots cast at the last two presidential elections preceding any apportionment. A reapportionment was to take place every twelve years.

The object of this unusual basis of representation was to reduce the house at the expense of the cities so far as possible. In many New Hampshire cities there are considerable numbers of aliens whose influence in enlarging city representation it was sought to eliminate. Estimates indicated that these cities would furnish about 70 per cent of the proposed reduction. The sentiments of the city delegates were assuaged by the argument that the process of Americanization now under way would eventually convert these aliens into citizens, and correspondingly enlarge the city quota of representatives.

In addition to these amendments the convention proposed to eliminate from the constitution the words "Protestant," and "rightly grounded on evangelical principles;" to abrogate the privilege of conscientious objectors to pay a money equivalent for his military

<sup>3</sup> This number varies slightly from session to session, owing to the variable representation of certain small towns.

services; and to strike out the requirement that pensions shall never be granted for more than one year at a time.

The temper of the convention was decidedly conservative. Attendance was poor and, as is usual in New Hampshire political bodies, leadership, organization and direction were carried on by a relatively small number. Very few measures were brought to the attention of the convention, and of these only a small proportion received serious consideration. The paraphernalia of hearings, investigations and special reports was conspicuously absent. The greatest single failure of the convention was its refusal to modify the present method of amending the constitution.<sup>4</sup> The existing system prevents the legislature from proposing amendments, and reserves this initiative to a periodic convention meeting once in seven years. For ratification of proposals an affirmative vote of two thirds of the qualified voters voting on the proposition is required. The disastrous results of this requirement are to be observed in the results of the polling November last. The results as announced from the office of the secretary of state follow:

Question 1 (Income Tax).....	Yes 46,480	No 30,364
Question 2 (Inheritance Tax).....	Yes 45,415	No 24,222
Question 3 (Item Veto).....	Yes 45,634	No 26,195
Question 4 (Reduction in size of House of Representatives).....	Yes 48,598	No 28,121
Question 5 (Conscientious Objectors).....	Yes 35,932	No 31,509
Question 6 (Protestant Religion).....	Yes 35,172	No 42,322
Question 7 (Pensions).....	Yes 44,456	No 31,995

Not one of the amendments was adopted although all but question six secured a substantial majority. The financial situation of the state remained in the same precarious condition; the size of the house of representatives promises to be considerably enlarged consequent upon the impending decennial reapportionment.

Although the members of the convention had not expected to reconvene, the situation was thought serious enough to warrant another attempt to carry through some of the amendments. The convention was called together by its president on January 28, 1921, for a session lasting a single day, and voted to submit four propositions. The first two, authorizing income and graduated inheritance taxes, were substantially identical with the recently defeated amendments. The

<sup>4</sup> In view of the popular vote, however, it is extremely unlikely that any attempt to simplify the method of amendment would have been accepted.

third proposed reduction of the lower house to a number not less than 300 nor more than 325, the basis of representation to be population; instead of the average number of qualified voters voting at presidential elections, as had been proposed at the preceding session of the convention. The fourth amendment proposed to strike out the obsolete sex requirement for voting and to provide that women may hold office.

The voting was lighter than at the preceding election in November; but apparently none of those who opposed tax reform were absent from the polls. The opposition to the income tax rolled up more than 3000 more votes than in November, while over 5000 additional votes were cast against the inheritance tax amendment. The results follow.

Question 1 (Income Tax).....	Yes 21,580	No 33,819
Question 2 (Inheritance Tax).....	Yes 23,354	No 29,473
Question 3 (Reduction of size of House).....	Yes 30,275	No 23,271
Question 4 (Women office holders).....	Yes 30,285	No 24,142

In explanation of the defeat of these tax amendments it has been suggested that the vote was taken at a bad psychological moment, when the federal tax returns were being filed. The voters were alarmed moreover at a deficit of \$250,000 incurred during 1920 as the result of an educational act passed in 1919, and were further aroused by reports that the legislature was delaying adjournment, hoping to be able to appropriate additional sums in view of enlarged sources of revenue. In addition notice must be taken of the considerable number of New Hampshire citizens who consistently vote No on any proposition.

The defeat of the tax amendments leaves the state in a deplorable financial condition. The general court is reported to be cutting appropriations to the bone, and programs of construction will perforce languish. Meanwhile, in the words of the *Granite Monthly*, the damage caused by the enforced curtailment may be well nigh irreparable.

LEONARD D. WHITE.

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## JUDICIAL DECISIONS ON PUBLIC LAW

ROBERT E. CUSHMAN

*University of Minnesota*

*Compulsory Labor—Constitutionality of State Statute Punishing as Vagrants All Able-bodied Men Not Engaged in Useful Work Regardless of Financial Ability for Self-Support.* Ex-parte Hudgins (West Virginia, May 20, 1920, 103 S. E. 327). In 1917 a statute was enacted by the West Virginia legislature punishing as a vagrant every able-bodied male resident of the state between the ages of sixteen and sixty, except students during school term, who should fail to engage for thirty-six hours per week in some lawful and recognized labor or business. This obligation to work was imposed regardless of the financial ability of any person to support himself and his dependents without it. Punishment was provided for the vagrancy thus defined in the form of a fine and imprisonment at hard labor to be performed on the public roads. The statute was to continue in force until six months after the termination of the war with Germany. The prisoner in this case was honorably discharged from the army in 1919 after a year of service overseas and was arrested for violation of the statute in April, 1920. The court held the act to be an arbitrary and unjustifiable interference with personal liberty and therefore a denial of due process of law. The purposes for which the restraints upon personal liberty set up in the act are imposed are not purposes which are generally comprehended within the police power of the state. It could not be justified as a general statute to protect the state against vagrancy because it applied to persons in no danger of becoming public charges and was limited in duration to the period of the war and six months thereafter. It could not be justified as a war measure because the state as such has no general war power and this act does not relate to anything concerning which the state may properly exercise its military authority. Finally it is held to be clearly within the spirit if not the letter of the Thirteenth Amendment and the legislation enacted for the enforcement thereof.

*Constitutionality of Statute as Determined by Reasonableness—Clause Authorizing Legislature to Enact Wholesome and Reasonable Laws Construed as Limitation upon Legislative Power.* Hodge v. City of Manchester (New Hampshire, June 1, 1920, 111 Atl. 385). The facts in this case are of little interest. They raise the question of the validity of a state providing that lands dedicated for highway purposes shall be discharged from public servitude if not used for public travel within twenty years of such dedication. The court examines the question of constitutionality in the light of the provision of the constitution of New Hampshire (pt. 2, art. 5) which provides that "full power and authority are hereby given . . . to the said general court . . . to make, ordain, and establish all manner of wholesome and reasonable . . . laws . . . so as the same be not repugnant . . . to this Constitution." The court clearly regards this clause of the constitution as a restriction upon the legislative power of the legislature, but declares that the test as to whether or not that limitation has been violated "is to inquire whether all fair-minded men must agree that enacting this chapter was an unreasonable exercise of legislative power." The application of this test to the statute in question results in upholding its validity.

It would seem from this case that the courts of New Hampshire are endowed with power to invalidate legislation on the grounds of unreasonableness even though it does not violate any specific constitutional provision. While the test set up by the court for determining reasonableness is a strict one, it is, nevertheless, of judicial origin and subject to judicial revision. The case is interesting in that the court did not raise the question of reasonableness under the due process clause of the state constitution (pt. 1, art. 15) as would be done in most jurisdictions, but chose rather to construe a clause conferring the power to pass reasonable laws as judicially enforceable prohibition against the passing of unreasonable laws. The doctrine of the case is discussed at greater length in the earlier case of Carter v. Craig (90 Atl. 598), decided in 1914.

*Court of Industrial Relations—Constitutionality of Statute Creating.* State v. Howat (Kansas, July 19, 1920, 191 Pac. 585). By act of January 24, 1920, a court of industrial relations was created in Kansas. This court is composed of three members appointed by the governor and is empowered to investigate with the aid of compulsory process any industrial controversy which in its judgment threatens to imperil

or destroy the efficiency or continuity of service of a wide range of industries declared by the statute to be affected with a public interest. These industries include the production and distribution of food, clothing, and fuel as well as the recognized types of public utilities and common carriers. The court is authorized after its investigation to issue orders to end the controversy and these orders which may extend to the regulation of wages, hours of labor, and general working conditions are binding upon the parties unless set aside as unreasonable by the supreme court of the state, to which an appeal can be made.

The defendants in the present case were imprisoned for contempt for refusing to obey an order of the district court to give evidence before the court of industrial relations which had called them as witnesses. They set up in defense the invalidity of the statute upon numerous grounds. The court held that the most important and interesting questions regarding the constitutionality of the act could not be raised by the defendants since they could attack the validity of only those sections which could affect their rights in the present litigation. These sections were held to be separable from the rest of the act and therefore unaffected by any possible invalidity of other portions of it. The parts concerning the defendants were all upheld. The power of the district court to order the defendants to testify before the court of industrial relations was sustained on the ground that the new tribunal was not itself a judicial body and upon the authority of *Interstate Commerce Commission v. Brimson* (154 U. S. 447) could be authorized to rely upon the regular courts for aid. The claim that the guarantee in the state constitution against self-incrimination was infringed by the act was rejected on the ground that the defendants had not as yet been asked to answer any questions and that such objection was prematurely raised. The power of the governor to act as the sole judge of the existence of an emergency authorizing the calling of an extra session of the legislature was upheld against the contention that the session which passed the statute was unlawfully called. The title of the act was declared not defective. With practically no argument the statute was held not to be invalid on the ground of merging legislative, executive, and judicial powers in the court of industrial relations. The industrial court was declared to be distinguishable in this respect from the Kansas court of visitation created by act of 1898 and held unconstitutional because of such comingling of powers. See *Western Union Telegraph Co. v. Myatt* (98 Fed. 335); *State v. Johnson* (61 Kans. 803). The court does not make clear, however, what the distinction is. Finally, it



is denied that the powers conferred upon the industrial court are in conflict with congressional statutes applicable to the same subject matter, although it is recognized that such statutes form limitations which the court of industrial relations must keep in mind in the exercise of its powers. It will be seen from this analysis that the important question whether the industrial court act is a legitimate exercise of the police power of the state in the light of the Fourteenth Amendment remains to be decided.

*Declaratory Judgments—Power of Legislature to Impose Non-Judicial Duties on the Courts.* *Anway v. Grand Rapids Ry. Co.* (Michigan, September 30, 1920, 179 N. W. 350). By a statute passed in 1919 any court of record in Michigan was authorized to render declaratory judgments. The act provided that "the court may make binding declarations of rights whether any consequential relief is or could be claimed, or not, including the determination, at the instance of any one claiming to be interested under a deed, will, or other written instrument, of any question of construction arising under the instrument and a declaration of the rights of the parties interested." The policy of the act was, in the words of its author, to provide a system of "remedial law" which would require the courts "to offer remedies in advance of the happening or even of the threat of any wrongful act, and to authoritatively advise parties as to what their legal rights may be in the circumstances in which they find themselves." In the present case the plaintiff asks the court to advise him whether the defendant company by whom he is employed as a conductor may lawfully permit him to work more than six days in any consecutive seven days in view of the provisions of a statute regulating that matter. A majority of the court held that the statute requiring it to render declaratory judgments was unconstitutional as conferring non-judicial power upon the court. After a most elaborate examination of the cases in which attempts have been made to require courts to render advisory opinions or to render decisions which were not to be binding upon the parties the court concludes that a proceeding seeking a declaratory judgment, if not strictly a "moot case," at least has all the objectionable characteristics of a "moot case" and imposes on the court a duty which is non-judicial. A vigorous dissenting opinion takes the position that the duty imposed by the act is judicial in character.

*Elections—Absent Voting—Power of State to Authorize Absent Voting for State and Federal Officers.* In re Opinion of The Justices (New Hampshire, March 16, 1921, 113 Atl. 293). The opinion of the court is here asked upon the question of the validity of a proposed statute authorizing absent voting for state officers, members of both houses of Congress, and presidential electors. The court discusses these various points separately and reaches different conclusions in connection with the different classes of officers. Relying upon the authority of an advisory opinion given upon the same question in 1863, the court declared that absent voting for state officers is forbidden by the constitution of New Hampshire, which is construed to require the actual presence of every voter at the polls or meeting at which the election is held. The legislature, however, may allow absent voting for presidential electors, inasmuch as the Constitution of the United States specifically provides that such electors shall be chosen in each state "as the Legislature thereof may direct." In the case of elections for members of the two houses of Congress the case is not so clear. The court frankly states that whether absent voting may be allowed in such elections is a question which must in the last analysis be finally determined by the houses of Congress themselves in passing upon the qualifications of their members. But even though this is true the court does not feel itself precluded from expressing its views upon the matter. The conclusion reached is that there is such doubt as to the validity of absent voting in congressional elections that the court is "unable to advise the Legislature that the proposed legislation would be valid." This conclusion rests primarily upon the fact that the "qualifications" of those voting for members of Congress must be the same as those of electors of the lower house of the state legislature. Presence at the polls may be regarded as a qualification for voting in a state election and absent voting would thereby be ruled out. It is also suggested that the absent voter who marks his ballot and sends it in before the day of election does not vote on the day of election but before that time, and this constitutes a possible violation of the requirement of the congressional statute fixing a uniform date throughout the country for the holding of congressional elections.

*Elections—Constitutionality of Primary Election Law Requiring of Candidate Affidavit That He Will Support Party.* Harrington v. Vaughn (Michigan, August 12, 1920, 179 N. W. 283). By a statute enacted in 1919 it is provided that the name of no candidate shall be printed upon

any primary election ballot unless such candidate files an affidavit stating that "he is a member of a political party, naming it, and that he will support the principles of that political party of which he is a member, if nominated and elected; that he is not, and will not become a candidate for the same or any other office on any other party ticket at said primary election." While admitting that this statute was undoubtedly enacted for the purpose of protecting the purity of elections; the court held that it was in violation of the clause of the constitution prescribing an official oath and declaring that "No other oath, declaration or test shall be required as a qualification for any office or public trust." The court, in passing, makes this interesting comment: "It may be well to inquire in what way it will be practicable for a judicial officer to discharge the duties of his office according to the principles of the political party with which he is affiliated. Is it not one's duty as a judicial officer, when litigation is before him, to know no political party, but to conduct the litigation without taking into consideration partisan politics?"

*Judicial Review of Legislation—Requirement of Concurrence of Extraordinary Majority of Court to Declare a Statute Void.* *Daly v. Beery* (North Dakota, April 20, 1920, 178 N. W. 104); *Barker v. City of Akron* (Ohio, April 2, 1918, 121 N. E. 646). These cases are of interest only in showing the operation of the North Dakota and Ohio constitutional provisions that statutes may not be invalidated by a court unless a specified majority of the members concur in the decision. The North Dakota supreme court is composed of five members and four members must concur in order to declare a statute void. In the present case one judge was disqualified and did not sit. The other four were evenly divided in their opinions as to the constitutionality of the statute before the court. Since under these circumstances it would obviously be impossible to secure the concurrence of four judges in holding the statute invalid it was not felt to be necessary to call in a district judge to sit in place of the disqualified judge. The statute was upheld. The Ohio rule is that six members of the present court of seven must concur to hold an act void in case the statute has been upheld by the court of appeals. The statute in this case had been upheld by the lower court. Four judges of the supreme court regarded it as unconstitutional while three believed it valid. It was therefore sustained.

*Police Power—Constitutionality of Statute Regulating Rents and Protecting Tenants in Certain Cases from Eviction.* People v. La Fetra (New York Court of Appeals, March 8, 1921, 130 N. E. 601). This case raises the question of the constitutionality of the New York housing laws passed in 1920. For the purpose of meeting in part the housing emergency, these laws provided that the rights of landlords to evict their tenants should be wholly suspended until November 1, 1922, provided the tenants were unobjectionable and paid a "reasonable rent." The presumption seems to be created by the act that any rent in excess of that charged during the preceding year is unreasonable and oppressive. The court upheld the validity of this law in a vigorous and interesting opinion.

In the first place, the statute does not deprive the landlord of his property without due process of law, since it is a legitimate exercise of the police power of the state. "The police power is a dynamic agency, vague and undefined in its scope, which takes private property or limits its use when great public needs require, uncontrolled by the constitutional requirement of due process." It is declared that a great public need does exist to justify the drastic restriction of private rights involved. The distressing character of the housing crisis in the City of New York is reviewed. "It is with this condition," declares the court, "and not with economic theory, that the state has to deal in this emergency." It goes on to say that "although emergency cannot become the source of power, and although the Constitution cannot be suspended in any complication of peace or war, an emergency may afford a reason for putting forth a latent governmental power already enjoyed but not previously exercised." It is said to be no objection to such an exercise of the police power that it is without precedent, since changing social and economic conditions call for changes in the laws which govern them.

In the second place, the act is declared not to be in violation of the guarantee of the equal protection of the laws. Would-be tenants out of possession are not discriminated against unduly by the protection afforded to those who are in possession. The law cannot provide homes for all and the classification thus established is not arbitrary. Nor are the landlords singled out for the restrictions of the statute subjected to arbitrary discrimination. "One class of landlords is selected for regulation because one class conspicuously offends." In the third place, the contention that the law works the impairment of the obligation of contracts is disposed of along conventional lines by

alluding to the well-established doctrine that the contract clause of the United States Constitution does not and cannot act as a limitation upon the legitimate exercise of the police power of the state. In conclusion, the court suggests an interesting standard by which to determine whether a business may be regarded as affected with a public interest and subject to regulation by the state. It says: "The conclusion is, in the light of present theories of the police power, that the state may regulate a business, however honest in itself, if it is or may become an instrument of widespread oppression . . . ; that the business of renting homes in the city of New York is now such an instrument and has therefore become subject to control by the public for the common good; that the regulation of rents and the suspension of possessory remedies so far tend to accomplish the purpose as to supervene the constitutional inhibitions relied upon to defeat the laws before us."

It should be noted that the statute involved in this case has been upheld by the United Supreme Court (*Brown Holding Co. v. Feldman*, 65 L. Ed. 539, April 18, 1921), but the opinion written by Mr. Justice Holmes in that case is very brief and does not attempt to deal with many of the points raised in the case here commented upon.

*Police Power—Segregation of Commercial and Industrial Buildings from Residences—Restrictions upon Construction or Use of Buildings in Designated Zones.* In re Opinion of the Justices (Massachusetts, May 20, 1920, 127 N. E. 525). Article 60 of the amendments to the constitution of Massachusetts provides that "the General Court shall have power to limit buildings according to their use or construction, to specified districts of cities and towns." Under the authority thus conferred the legislature drafted a bill authorizing towns and cities to pass ordinances establishing zones within which buildings used for commercial and industrial purposes shall be confined and forbidding their erection in zones set apart for residential purposes. Similar zones may also be established for the purpose of segregating tenement houses and provision is made for regulating the construction and use of buildings in districts established in towns and cities. All these provisions are to be carried out "in such manner as will best promote the health, safety, convenience, and welfare of the inhabitants, will lessen the danger from fire, will tend to improve and beautify the city or town, will harmonize with its natural development, etc." The court was asked to give its opinion as to the validity of such a statute, and replied that

it is free from constitutional objection. After a brief review of cases in which municipal zoning regulations for various purposes have been upheld the court concludes that the statute in question is within the broad conception of the police power created by the amendment.

The statute is held not to be void by reason of its obvious purpose to make possible the enhancement of the beauty of restricted sections of the municipalities. This esthetic purpose is held to be a subordinate one and not the primary object of the statute. It is interesting to note that the court still stands firm on the orthodox doctrine that the police power may not be used for esthetic purposes. It says: "Enhancement of the artistic attractiveness of the city or town can be considered in exercising the power conferred by the proposed act only when the dominant aim in respect to the establishment of districts based on use and construction of buildings has primary regard to other factors lawfully within the scope of the police power; and then it can be considered not as the main purpose to be attained, but only as subservient to another or other main ends recognized as sufficient under Amendment 60 and the general principles governing the exercise of the police power." The various classifications permitted by the statute are not so unreasonable as to work any denial of the equal protection of the law. Nor is the act in violation of the due process clause of the Fourteenth Amendment. After a careful review of a long list of federal authorities the court concludes that it is not on its face in violation of any of the principles thus far announced by the Supreme Court in its interpretation of due process of law, and points out that it is impossible to say that the proposed zoning regulations will not promote the general welfare and safety by lessening dangers incident to fire, disorder, traffic congestion, contagion and other evils caused or promoted by crowded conditions in towns and cities.

*Proportional Representation—Constitutionality of the Hare System.* *Wattles v. Upjohn* (Michigan, September 30, 1920). In 1918 the city of Kalamazoo adopted a home rule charter in which was embodied the Hare or "single transferrable vote" system of proportional representation as the method of selecting the city commission. This case holds that method of conducting an election to be in violation of the state constitution. The opinion of the court is interesting and informing. It contains considerable data relating to the history of proportional representation. It points out the fact that the principle of proportional representation is embodied in several different schemes or sets

of rules regarding the relative merits of which there is wide difference of opinion. In fact a good deal of space is occupied in showing that although the plan is by no means new its followers have not made rapid progress in securing the widespread acceptance of it. It seems very clear that the court itself does not approve of proportional representation on grounds of general policy. The Kalamazoo charter provisions are held to be in violation of the constitutional provision denying to cities and villages the right to abridge the right of elective franchise. A plan of voting under which the elector is allowed to cast a single first choice vote and then indicate successive choices for as many other candidates as he pleases is held to violate the constitutionally guaranteed right to vote for a candidate for each office to be filled and to have votes so cast be of equal weight with the votes cast by every other elector. In its view that the constitution guarantees to each voter a vote of equal weight for each office to be filled the court is supported by authority of cases invalidating provisions for preferential and cumulative voting. See *State v. Constantine* (42 Oh. St. 437), *Maynard v. Board of Canvassers* (84 Mich. 228), *Brown v. Smallwood* (130 Minn. 492).

*Recall of Judicial Decisions Invalid under Federal and State Constitutions.* *People v. Western Union Telegraph Co.* (Colorado, April 4, 1921, 198 Pac. 146); *People v. Max* (Colorado, April 4, 1921, 198 Pac. 150). These cases are of considerable interest since Colorado is the only state which has adopted the system of recall of judicial decisions and these are the first cases in which the constitutionality of that system has been called in question. The provisions in the constitution of Colorado relating to the recall of decisions went into operation in January, 1913. The essential features of the plan are as follows: First, no court in the state except the supreme court has power to declare any state or municipal law void as in violation of either state or federal constitution; second, no decision of the supreme court invalidating a state or municipal law under federal or state constitutions shall go into effect until sixty days after the date on which it is rendered; third, during this sixty-day period five per cent of the voters of the state may file a petition the effect of which is to require that the law thus invalidated shall be submitted to a vote of the people at a general or special election; fourth, if the law thus submitted is approved by a majority of those voting thereon "it shall be and become the law of this state notwithstanding the decision of the Supreme Court."

The Western Union Telegraph Company case arose primarily on the question whether the state district court could be forbidden to declare a state law void as violating the Constitution of the United States. The defendants were charged with violating the "Anti-Coercion Act" by discharging an employee on the ground of trade union membership. A statute similar in character had been held void by the United States Supreme Court in *Coppage v. Kansas*, 236 U. S. 1, and the trial court declared the Colorado act invalid. On writ of error the supreme court held that no provision of the state constitution could take away from any state judge the right and duty imposed by Article VI of the Constitution of the United States to enforce the constitution, laws, and treaties of the United States as the supreme law of the land, "anything in the constitution or laws of the state to the contrary notwithstanding." Any other holding would recognize the right of the people of the state of Colorado to nullify the provisions of the federal Constitution. The court also held that its own decision sustaining the trial court and declaring the "Anti-Coercion Act" void must go into effect immediately and that the provisions of the state constitution subjecting that decision to a sixty day delay and to possible reversal by popular vote were void and without effect. The people of the state of Colorado are wholly without authority to amend the Constitution of the United States by giving effect to state laws which are in conflict with its provisions, nor can they suspend the operation of the federal Constitution for a period of sixty days.

In the Max case a somewhat similar set of facts was presented, but the state law in question was declared void by the trial court as in violation of the state constitution instead of the federal Constitution. The supreme court held here that the provisions relating to the recall of decisions based on the federal Constitution were inseparable from those relating to the recall of decisions invalidating acts under the state constitution. Since the sections were indivisible the decision in the Western Union Telegraph case would control here. But the court went further and held that the sections providing for the recall of decisions were in violation of due process of law. The general effect of the provisions is to prevent the courts from giving due consideration to what may be a vital part of a man's defense, clearly a denial of due process. The court sums up its views on this point in striking language. "If an unconstitutional statute, creating a crime unknown to the common law, may be passed by the legislature; if a citizen may be put upon trial thereunder; if the trial court may be prohibited from hearing his plea



that the statute violates the constitutional guarantees of his state; if, when this court has so held, that statute may be re-enacted by a bare majority of those voting thereon and the severest penalties be thereupon inflicted; then law has become a phantom and justice a dream, and the constitutional guarantees of the sacredness of life, liberty and property, "a tale told by an idiot, full of sound and fury, signifying nothing." The conclusion of the court is that the whole scheme for the recall of judicial decisions is null and void and that decisions of the state courts holding statutes unconstitutional must go into effect immediately and must stand upon exactly the same footing as any other decisions of the court.

*Trade Unions—Membership in Union as Ground for Discharge of Firemen by Municipal Commission.* McNatt v. Lawther (Texas, Court of Civil Appeals, June 9, 1920, 223 S. W. 503); San Antonio Fire Fighters' Local Union No. 84 v. Bell (same, June 19, 1920, 223 S. W. 506). In the first of these cases the plaintiffs, who were seeking by mandamus their reinstatement as firemen in the city of Dallas, joined a local union affiliated with the American Federation of Labor. They were ordered by the mayor and commissioners of the city to withdraw from the union and upon refusal were suspended and later discharged. The charter of Dallas provided that policemen and firemen should hold their positions during good behavior and should be removed only for such causes as in the opinion of the commissioners rendered them unfit for service and after notice, the filing of charges, and a hearing. The commissioners filed charges of insubordination and an attempt to stir up strife and trouble in the fire department by bringing it under the control of the American Federation of Labor. The court held that they had power to revise the decision of the commissioners in respect to removals only when that power had been exercised in an arbitrary and capricious manner. After citing the Boston police strike the court said that it could not say as a matter of law that the conclusion of the commissioners that membership in a trade union unfitted a fireman for effective service did not rest upon reasonable grounds. The state statute making it lawful for any person to join a labor union was declared to afford no protection against discharge on the ground of membership in such union.

In the second case the same result is reached and couched in somewhat stronger language. Here the plaintiffs were seeking to enjoin the discharge of their members from the fire department of San Antonio

on the ground of membership in a trade union. The city had the right to determine that such membership rendered its appointees inefficient and untrustworthy and the courts could not reverse such a decision. In the absence of statute the city was declared to have the same right to remove its employees as a private employer.

## FOREIGN GOVERNMENTS AND POLITICS

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**Recent Articles in Foreign Periodicals.** The following brief survey notes a few of the more important and more interesting articles on foreign governments and constitutions which have appeared during the past year or two in leading European journals. It includes discussions of governmental organization, structure, process and procedure only, omitting as far as possible what has been written concerning political issues, party fortunes, or questions of public policy.

Most of the material noted is from British publications and deals with the United Kingdom or its dependencies. Of the discussions dealing with Great Britain one of the most able is an article by J. A. R. Marriott on "Parliament and Finance" in the *Edinburgh Review* for January, 1920, analyzing the reports of the parliamentary select committee on national expenditure. In addition to considering important failings in method and procedure in the existing manner of financial control, which require no fundamental readjustment, but rather changes in detail and a strengthening and extension of the present system, the writer contends (1) that the treasury must cease to be a spending department, (2) that cabinet solidarity must be restored and departmental isolation ended; and (3) that in order that the Commons may really control finance and that independent action and criticism may be made possible, every motion for change in the government's estimates should not be treated as a question of confidence.

The *Nineteenth Century* for July, 1920, contains an article by Walford D. Greene entitled "An Omniscient Prime Minister." In it he discusses the centralization of executive power in the hands of the prime minister. Mr. Greene shows that the cabinet is becoming increasingly independent of Parliament, while the premier is already authoritative and independent within the cabinet—conditions accentuated by the war and Lloyd George, but manifest long before them. Great Britain seems to be traveling fast in the direction of presidential government.

In the December, 1920, issue of the same journal is a review of the Haldane commission's report on "The Machinery of Government." The article shows the need of a more logical distribution of functions among the various departments according to the nature of the service they perform. But the reviewer fails to make known how excellent a document the Haldane report really is.

The March, 1920, *Contemporary Review* contains a brief article called "Home Rule for England." It shows the need for a federal devolution of parliamentary authority in the United Kingdom, but points out that in any such scheme it would be more wise, if not necessary, to maintain the unity of England under an English parliament, rather than to divide that country into several legislative areas.

H. E. A. Cotton, in the January, 1920, issue of the same review discusses the Government of India Act of 1919. He tells how in the eight major provinces (except Burma) certain specified subjects of governmental action will be "reserved" to the governor and executive council, all others standing "transferred" to ministers chosen from elected legislative councils. He also discusses finance, the franchise, central and provincial government, and imperial relations. The treatment is systematic and instructive.

There are, of course, innumerable articles on Ireland, dealing with all the phases of the situation and on all sides of the controversy. The *Fortnightly Review* for April of last year contains a short but systematic discussion, called "The Government of Ireland: The Fourth Home Rule Bill." The essay gives a brief historical survey of Anglo-Irish relations, and the chief points of the three preceding home rule measures. It then sketches the present scheme, noting (1) the limitation on home rule and on specific reservation of power to the Imperial Parliament, and (2) the quasi-federal North-South division and the All-Ireland Parliament to be selected by the Northern and Southern Parliaments from their own members. This arrangement, strikingly similar to the Austro-Hungarian Ausgleich, the author thinks "reveals a touch of statesmanship."

There is a similar but less systematic discussion of the same sort, entitled "The Better Government of Ireland," in the April, 1920, *Contemporary Review*. The author, Stephen Gwynn, believes that the new federal arrangement ought to work as well in Ireland as it does in Switzerland, where, he observes, racial and religious conditions are much the same.

Of interest also are several articles dealing with the need for reorganization and reform in the British foreign service. The *Nineteenth Century*, in October, 1919, had an able discussion of the methods of selection and the organization and duties of the British diplomatic and foreign office service, by Malcolm McIlwraith, written in a friendly critical spirit, and comparing and contrasting the organizations and practices of other countries with those of Great Britain.

In *New Europe* for April 8, 1920, Professor George Young, in an article called "Foreign Office Reform," urges the reorganization of the services by: (1) coördinating political and commercial work, (2) abolishing all income qualification for entry into the diplomatic service, (3) amalgamating the Foreign Office and diplomatic branches, (4) establishing a course in post-graduate training, and (5) reorganizing the whole service along regional lines; namely, Oriental, the Levant, Slavonic, Teuto-Scandinavian, and Romance, each with a specially trained regional corps. In a later number of the same paper Professor Young expresses his satisfaction at finding the more important of these reforms already operative in Germany. The article is entitled "Foreign Office Reforms: A Light from Berlin."

Of continental comment on British government there is not much of the sort in which we are interested. But there is an article worth noting in *La Revue Politique Internationale* for January, 1920, on the "Future of Political Parties in England." Its interest for us lies in the fact that its basic assumption is that the two-party system is an inherent and indispensable part of the British governmental system. The author, none other than Sir Sidney Low, tries to show by sketching the history of parties from shortly before the war to date, and analyzing the contending factions within the Labour Party and within the Coalition, that the bi-party system will be restored. He forecasts a sort of Birkenhead "Conservative bloc" of old Unionists and Liberals opposed by a "variegated horde of Socialists and Social Democrats."

Of British material on other countries there is little of much importance. It may be well, however, to mention an essay in the May, 1920, *Nineteenth Century* by Pierre Crabites, whose rather misleading title is "Republicanism in Germany and France." The paper begins with an account of the rise of freedom in France and in England, and devotes the greater part of its space to what could scarcely be called a favorable criticism of the administration of French law and justice, declaring that Englishmen would never tolerate its methods. It ends with the assertion that republicanism is possible in France because "equality

permeates the atmosphere" and "castes and classes are unknown," while the German of today cannot grasp the true meaning of such equality. The author ventures that while the world may applaud the apparent triumphs of democracy, the German civil servant, as the Egyptian priest, will smile and keep his hand on the wheel. It is only fair to say that in spite of its sweeping assertions this article contains some interesting facts.

In the *Quarterly Review* for January, 1921, is an analysis of the new German constitution, by J. W. Gordon. The April (1921) number of the same journal contains an interesting article on "The Science of Public Administration." While based mainly on recent official reports dealing with British administration, this discusses some of the general principles of administrative organization.

The *Journal of Comparative Legislation and International Law*, has published brief accounts of the new South American constitutions in Uruguay (January, 1921) and Peru (October, 1920), and also of the constitution of Czecho-Slovakia and the new Government of India Act (January, 1921), as well as the annual surveys of legislation in the British dominions. A brief outline of the constitution of Czecho-Slovakia was also given in *New Europe* for April 29, 1921. It gives the organization and relations of the House of Deputies and the Senate, the position of the President, the ministers, the referendum, the organization of the judiciary, the rights of minorities, the franchise and proportional representation. The government seems to be a cross between the cabinet and presidential types. The ministers are responsible to Parliament, but the President seems to have an independent power of dissolution and a suspensive veto. It will be interesting to see how this system will work out.

Most of the articles appearing in French periodicals deal with political tendencies current in the republic, or with tenets and views of the various schools of French political thought.

M. Eduard Julia, in "Elections et Revolution" in the October, 1919, *Revue Politique et Parlementaire*, contends that France is really in a state of revolution. The workers are in a dominant position, and their dominance is due to the fact that the state owes them so much money. The author bitterly regrets this state of affairs. The article is exceedingly anti-labor in tone.

M. A. Darler, in the December, 1919, issue of the same periodical has a paper called "Le Leçon des Elections." In it he analyzes the results of the most recent French national election. He comments on

the socialist losses and the new Republican *bloc*. He notes the fact that only one-fourth to one-third of the electorate participated in the polling. This situation alarms him and he suggests a compulsory voting law as a remedy. But more interesting is another article in the same issue of the *Revue* on the French election law of 1919, outlining its principal features in some detail, showing it to be a hybrid affair, an ingenious combination of proportional and majority representation. In the same *Revue* for March, 1920, is an article on the new German constitution.

A number of articles in French periodicals deal with administrative reform. A very interesting discussion entitled "Sur un projet de réorganisation de la police" appeared in the *Revue Politique et Parlementaire* for April, 1919. The writer declares that the tendency toward centralization never ceases. The central government continually seeks to gain ground at the expense of the municipality. Now it is the local police which the minister of the interior is attempting to reorganize and control. The only local sentiment in favor of this move comes from the peasant groups, who under the new system would pay only part of the upkeep of their local guards, instead of all, as now. The plan calls for the establishment of a new body of cantonal police, to be stationed at a central point, the chief city in the canton, rather than assigned to the various communes. The local *maires* would lose all their authority over the police. These changes would destroy the existing advantages of the rural guards' acquaintance with the people of the villages, not to speak of dangerously increasing central authority and lessening local political vigor.

An extended report of a commission of the Chamber of Deputies on administrative reorganization in France was published in the *Revue Générale d'Administration* for May-June and July-August, 1919, and this was followed in the next number of the *Revue* by an article on administrative reform from the economic point of view, written by Gaston Monsabrat. In the same *Revue*, beginning with the number for July-August, 1920, is a series of articles on executive power in time of war.

A short article on recent tendencies relative to the office of President of the French Republic appeared in the *Revue du Droit Publique et de la Science Politique*, for October-December, 1920.

In the *Revue des Sciences Politiques* for June 15, 1920, is an article on regionalism, by Jules Mihura, secretary-general of the French Regionalist Federation. The same *Revue* for January-March, 1921, contains a

translation of two chapters of Lord Bryce's *Modern Democracies*: (1) The Character of Public Life, and (2) What Democracy had done for France. These are published under the title, "Sur la Democratie Française." No comments accompany the excerpts.

German periodicals begin to present systematic articles relating to the new constitutions in that country. In the *Annalen für Soziale Politik und Gesetzgebung* for 1919, Dr. Richard Thoma, under the title "*Deutsche Verfassungsprobleme*," discusses some of the problems before the German constitutional convention. He tells of the report of the Preuss commission recommending a federation, not of the old units, but of new ones formed by merging the smaller commonwealths and dividing Prussia into several new states. The writer discusses also the struggle between the forces of federalism and centralization. He shows that if Austria is to be finally merged with the German Republic, a federal system of government is a necessity.

An exceedingly able essay in the same number of the *Annalen*, entitled "*Parliament und Sachverständigenkammern*," discusses the relation of Parliament to expert bodies. The first section deals with the organization of "autonomous" associations of workers, employers, financial and commercial chambers, and such groups. The author then dwells on the organization of units in the army, battalions, companies, etc.; on cultural associations, and on the possibility of socialization of natural resources and industry through these "autonomous" groups. The essay ends with a section under the caption "Bilanz" which discusses the balance between these various groups and their relations to Parliament. The discussion is not abstract, but is in the light of German political conditions.

Volume ix of the *Jahrbuch des öffentlichen Recht*, for 1920 (the first which has appeared since 1914), is given entirely to recent political changes. About one-third of this number is an extended article on "*Revolution und Reichsverfassung*" in Germany, by Dr. William Jellinek, professor at Kiel. This deals with the Revolution of November, 1918, the provisional constitution of February, 1919, and at greater length with the definitive constitution adopted by the Weimar assembly. This is followed by a series of shorter articles, by various authors, on the new constitutions of Bavaria, Saxony, Wurtemberg, Baden, Hesse, Mecklenberg, the new state of Thuringia, and German-Austria. The final article in this *Jahrbuch* is on the Peace Treaty of Versailles, by Dr. Herbert Kraus, professor in Königsberg.



Several discussions of recent constitutional developments in Germany have also appeared in the *Archiv des öffentlichen Rechts*. In Number 4, Volume 39 (1920), is an article entitled, "*Kritische Vorbetrachtungen zur neuen Reichsverfassung*," by Leo Mittmayer; and one on the new constitutions of Baden and Wurtemberg by Dr. Otto Koellreutter. In Number 1, Volume 40 (1921), is an analysis of the new Prussian constitution, by Robert Piloty. This calls attention to the new *Staatsrat* and the provisions for provincial and local autonomy as the outstanding features of the new instrument.

STERLING D. SPERO.

*Columbia University.*

**Swiss Treaty Initiative.** Since the referendum on the League of Nations of May 16, 1920, the most important question to be dealt with by the Swiss people was the initiative on treaties, accepted January 30 of this year. The initiative was presented in the form of an amendment to Article 89 of the federal constitution (the referendum article), and may be translated as follows:

"Treaties with foreign powers which are concluded without limit of time or for a period of more than fifteen years shall also be submitted to the people for acceptance or rejection upon demand of 30,000 Swiss citizens qualified to vote, or of eight cantons."

The effect of this amendment is to subject future treaties of the classes named to the optional referendum upon the same terms as ordinary federal legislation. For twelve years this question has been before the Swiss people. Disclosures made in 1909 regarding a secret transaction in connection with the St. Gothard treaty caused intense popular indignation.<sup>1</sup> Long before this, however, the Swiss had shown repeatedly that they possessed in more than ordinary measure the distrust democratic peoples are apt to feel regarding diplomatic procedure. Following the disclosures of 1909, initiative petitions were circulated in favor of the above constitutional amendment, receiving 64,391 signatures, nearly 15,000 more than were needed. Before a vote could be taken, however, the war broke out. Action on this, as well as on three other pending questions, was postponed to avoid the possible additional distraction of public opinion at a time when the country was already torn by questions arising out of the war.

When the embargo on this question was finally lifted during the

<sup>1</sup> Cf. Jesse Macy, "The Swiss as Teachers of Democracy," *Review of Reviews*, Vol. 47 (June, 1913), pp. 711-714.

latter part of 1920, the Swiss people took it calmly enough. Nothing like the interest manifested over the League of Nations, or even over such domestic questions as the nationalization of railroads, was aroused. In part, this was due to the virtually universal recognition that the proposal would be carried by a large majority. Earlier in the agitation the federal (executive) council had expressed itself energetically against the proposition, and as late as 1919 it contemplated bringing forward a counter proposal accompanied by a strong argument. In the end, however, the federal council and the two legislative bodies allowed the initiative to go before the people without opposition, although not without misgivings.

In discussions before the people arguments against the initiative proposal made a much greater showing than arguments for it. Occasional diplomatic errors, such as that committed in connection with the St. Gothard treaty, it was held, did not justify so drastic a change in the constitution. The possibility that future treaties might be haled before the people by referendum petition would cripple Swiss negotiators, and involve the whole treaty-making power of the country in doubt and discredit. Foreign powers interested in treaty decisions one way or another might attempt to influence the referendum vote of the country by intrigue, propaganda, or even by the use of corruption funds. It was further pointed out by the opponents of the proposal that a referendum vote by the people on a domestic question involved the power to decide that question definitively. A referendum vote on a treaty, however, involved action on a pending agreement affecting the interests not only of the Swiss people but of one or more other peoples. The latter might, not unnaturally, deeply resent unfavorable action by the Swiss electorate.

It was rather noteworthy that arguments against the treaty initiative seldom took the form of a denial of the ability of the people to pass on foreign relations, or of an assertion that the superior knowledge and ability of seasoned statesmen should alone be relied upon in this field. Quite obviously, the opposition was half-hearted and academic. Too many signs of the times indicated that it would carry by a large majority—that, rightly or wrongly, the Swiss people had decided to take a hand in treaty-making, just as they had decided long ago to take a hand in ordinary legislation.

On January 30 this forecast was realized, 388,365 voting for, to 158,668 voting against, the proposal.\* It carried every canton except

\* *Berner Bund*, January 31, 1921. The vote of several communes in Ticino had not been received at the time the above figures were printed. On the same

Uri and Thurgau. Once more, therefore, Switzerland is to experiment with democracy in a hitherto untried field. A certain leeway is allowed the executive and legislative bodies in dealing with treaties for not more than fifteen years. This would seem to offer an opportunity for evasion, particularly in the case of commercial treaties, which may readily be concluded for shorter periods. On the other hand, a government so cautious as that of Switzerland is not likely to go far in this direction against the will of a people so jealous, watchful and powerful. Of course a small nation, pledged to neutrality, can undertake such experiments with much greater likelihood of success than the people of a great power. The movement generated by the war in favor of open and democratic diplomacy assures an interest the world round in Switzerland's experience under this new amendment.

ROBERT C. BROOKS.

*Swarthmore College.*

day that the Swiss people voted "yes" by so overwhelming a majority on the treaty initiative, they voted "no" by an even greater majority on a purely domestic question, i.e., the military justice bill, submitted to them under the optional referendum. This bill, backed by Socialists and anti-militarists, proposed to substitute the varying codes of the twenty-five cantons for the uniform federal penal provisions in cases coming under military law. Soldiers guilty of violations were to be tried, not in the federal courts, but in the courts of the canton where the offence occurred. The opponents of the bill denounced it as a revolutionary attempt to break down all discipline in the army, and the country sustained them by a vote of 384,446 to 193,000. Now that the Swiss army system has been freed from this menace, it is generally conceded that the hardships imposed by the outworn penal law of 1851, will be removed by ordinary legislative processes.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

By vote of the Executive Council, the next annual meeting of the American Political Science Association will be held at Pittsburgh in December, 1921. The American Economic Association will be in session in the same city on the same days. The committee in charge of the political science program is C. G. Fenwick, Bryn Mawr College, chairman; C. E. Merriam, University of Chicago; F. B. Sayre, Harvard Law School; J. T. Young, University of Pennsylvania; and V. J. West, Stanford University.

Since the May issue of the *Review* the following names have been added to the list of members of the association:

Allen, Charles A., San Jose, Cal.  
Baker, Ray Stannard, Washington, D. C.  
Bass, R. P., Eugene, Ore.  
Begg, James T., Washington, D. C.  
Biblioteka Uniwersytecka, Poznan, Poland.  
Carneiro, Dr. Mario, Rio de Janeiro, Brazil.  
Errera, Professor Paul, Brussels, Belgium.  
Fenn, Rev. P. T., Jr., Syracuse, N. Y.  
Ganfield, W. A., Center College, Danville, Ky.  
Gavis, Roy L., Roanoke, Va.  
Hagerman, H. J., Roswell, N. M.  
Jacobson, Conrad, Ponca, Neb.  
Jacoby, N. D., New York, N. Y.  
Janson, Florence E., Rockford, Ill.  
Kiekhof, W. H., Madison, Wis.  
Klinger, A. Conn, Delaware, Ohio.  
Lay, Tracy, Washington, D. C.  
Lewis, J. J., Kirkwood, Mo.  
Lockey, Joseph B., Nashville, Tenn.  
The Low Library, Shanghai, China.  
McCormick, Edith R., Zurich, Switzerland.  
Morris, Roland S., Philadelphia, Pa.  
Plimpton, Francis T. P., Amherst, Mass.

Scott, J. F., Berkeley, Cal.

Library, Southern Branch, University of California, Los Angeles, Cal.

Reyes, José S., New York, N. Y.

Shaw, G. Howland, Washington, D. C.

Tsen, D. C., Shanghai, China.

Thomas, Thomas H., Windsor, Vt.

Villaran, Manuel V., Lima, Peru.

Williams, Bruce, University of Virginia, University, Va.

Zimmerman, J. F., New York, N. Y.

Professor A. N. Holcombe, of Harvard University, is giving instruction during the summer term at Leland Stanford Jr. University, and Professor Lindsay Rogers is lecturing in the summer school of the University of Southern California.

Professor W. B. Munro, of Harvard University, gave the Weil Foundation lectures on American citizenship at the University of North Carolina during the month of April. These lectures, which dealt with the subject of "Personality in Politics," will be published in the autumn.

Mr. James A. Garfield, a graduate of Williams College and of the Harvard Law School, has been appointed instructor in constitutional law at Harvard University for next year.

Professor Walter J. Shepard has resigned his position at the University of Missouri to accept a similar one at Ohio State University.

Dr. E. E. Eubank, of the Y. M. C. A. College of Chicago, has been appointed professor of social science at the University of Cincinnati.

Professor Harold S. Quigley, of the University of Minnesota, has been granted leave of absence for 1921-22. He will spend the year in China, teaching at Tsing Hua College and carrying on research on Far Eastern politics.

Mr. C. R. Robinson has been appointed instructor in political science at the University of Minnesota.

Mr. Edward C. Smith, instructor in political science at Lafayette College, has been appointed to a similar post in New York University.

Professor John M. Mathews, of the University of Illinois, is teaching at the University of Nebraska during the summer session, and Dr. C. A. Berdahl is teaching for the summer at Tulane University.

Professor G. W. Rutherford, of Grinnell College, is teaching during the summer session at the University of Kansas.

Dr. F. H. Guild, instructor in political science at the University of Indiana, has been promoted to an assistant professorship.

Professor F. W. Coker, of Ohio State University, is giving summer courses at the University of Pennsylvania.

Mr. J. H. Leek, a graduate of James Milliken University and a graduate student at the University of Illinois, has been appointed instructor in political science at the University of Pennsylvania.

Mr. H. W. Thompson, who is completing his work for the doctor's degree at Wisconsin, has been appointed instructor in political science at that institution.

Mr. Raymond L. Buell has resigned his position at Occidental College in order to resume graduate work at Princeton University.

Dr. N. H. Debel, of Goucher College, gave two courses on American government in the summer session of Johns Hopkins University.

Dr. F. A. Magruder, associate professor of political science at Oregon Agricultural College, is traveling in Europe during the summer. Dr. U. G. Dubach, of the same institution, has been on leave since May 1 and has been visiting the principal South American countries.

The American Philosophic Society has awarded the Henry Phillips prize, amounting to two thousand dollars, for 1921 to Professor Quincy Wright, of the University of Minnesota, for an essay entitled "The Control of Foreign Relations in the United States; the Relative Rights, Duties, and Responsibilities of the President, of the Senate, of the House, and of the Judiciary, in Theory and in Practice."

With a view to bringing about coöperation among the committees on teaching, maintained by several learned societies, a national council

for the social studies has been organized. The officers for the first year are: A. E. McKinley, professor of history in the University of Pennsylvania, and editor of the *Historical Outlook*, president; R. M. Tryon, professor of history in the University of Chicago, vice president; and Edgar Dawson, professor of political science at Hunter College, secretary-treasurer.

The seventh annual session of the Summer School of Community Leadership will be held at the University of Wisconsin, August 15-26. The school is conducted by the American City Bureau, and is specially adapted to the needs of secretaries of chambers of commerce and civic workers of various kinds.

Under the direction of Dean Roscoe Pound and Professor Felix Frankfurter, of the Harvard Law School, a survey has been made of the administration of criminal justice in Cleveland. The survey was conducted in five divisions, *i.e.*, police, prosecution, court administration, penal treatment, and medical relations. No such comprehensive attempt to study the problem of the treatment of the offender in a metropolitan city has hitherto been made.

The recently established New York State Association, of which Mr. Adelbert Moot of Buffalo is president, and Dr. Robert Moses of New York City is secretary, has started the publication of a *Bulletin* devoted to public affairs of the state.

The Bureau for Research in Government at the University of Minnesota has published "A History of the Constitution of Minnesota," by the director, Professor William Anderson, in collaboration with Dr. A. J. Lobb.

The Harris political science prizes for 1921 have been awarded as follows: first prize of \$150 to Harold F. Kumm, University of Minnesota, for an essay entitled "The Legal Relations of City and State with Reference to Public Utility Regulation"; and second prize of \$100 to Clarence E. Fugina, University of Wisconsin, for an essay entitled "Budgetary Reform in the National Government of the United States." Honorable mention was accorded to J. F. Sharp, Wabash College, for an essay entitled "Campaign Contributions and Expenditures and their Regulation."

The subjects from which competitors may choose in 1922 are as follows:

- (1) Freedom of speech, press and assembly.
- (2) Comparison of American bills of rights with equivalent provisions in foreign post-war constitutions.
- (3) Administrative reorganization in the national government, or in state governments.
- (4) State or local administration in a particular field, such as public health, public welfare, police.
- (5) Governmental intervention in labor disputes.
- (6) Municipal Government: (a) Is a city more of a business corporation than a state? or, (b) Is commission or manager government adapted to cities with more than 300,000 population?
- (7) Recent tendencies in primary elections and other methods of nominations.
- (8) Party platforms: (a) Comparative study of all the national party platforms of 1912, 1916, and 1920, or of state party platforms in a particular state in any one of those years; or (b) influence of national platforms on national legislation; or of state platforms on legislation in a particular state.
- (9) Congressional control of national elections.
- (10) Organized labor as a factor in politics in Great Britain or in the United States.
- (11) American policy in the Caribbean.
- (12) Economic aspects of the Monroe Doctrine.
- (13) Far Eastern politics with reference to (a) the Shantung controversy, or (b) the Japanese demands in China since 1914.
- (14) Workings of the League of Nations during its first year.
- (15) Political reconstruction in India.

The competition is open to all undergraduates in colleges and universities of Minnesota, Wisconsin, Illinois, Iowa, Indiana, and Michigan. For further particulars, address Professor N. D. Harris, Harris Hall, Northwestern University, Evanston, Illinois.

An Institute of Public Administration has recently been organized in New York City to extend and carry on the work of the Training School for Public Service of the New York Bureau of Municipal Research. Furthermore, in recognition of the place of research in the training of administrators, the Bureau of Municipal Research has itself been fused with the institute. Since 1906, the bureau has been



rendering technical service to national, state, city and county governments in all phases of public administration. Special attention has been given to administrative organization, personnel management, financial planning, budget making, taxation, debt administration, accounting, purchasing, public health, police and fire administration, the management of public works and utilities, and the introduction of modern business methods in government. Since 1911 the Training School for Public Service has given instruction to over 450 students, many of whom are now found in responsible administrative positions with the national, state and city governments, in bureaus of research, chambers of commerce, universities, and civic federations. The National Institute of Public Administration has acquired the good-will, the accumulated experience and traditions, the library, and the entire staff of the Training School for Public Service and the Bureau of Municipal Research. It plans to extend the educational and scientific work heretofore carried on by these organizations and to provide a more systematic and comprehensive course of training.

The ninth meeting of the Governmental Research Conference of the United States and Canada was held in Philadelphia, June 2-4, 1921. This was the second meeting of the conference to be held apart from the National Municipal League, the first separate meeting being held in Chicago in 1919.

The early sessions of the meeting were devoted to the discussion of various committee reports. Dr. A. E. Buck, of the National Institute of Public Administration, presented a tentative draft of a budget section for state constitutions, and Wendell F. Johnson, of the Toledo Bureau of Publicity and Efficiency, made a report with regard to a charter section on purchasing. A preliminary report by William C. Beyer, assistant director of the Philadelphia Bureau of Municipal Research, on possible ways of reconstituting our civil service commissions, was followed by a round-table discussion of public employment problems. Dr. Luther H. Gulick, acting director of the National Institute of Public Administration, presented a report making tentative suggestions with regard to the organization of boards of education.

Perhaps the most interesting session of the meeting was the one devoted to a discussion of "Developments in Governmental Organization to Meet Present Day Needs." The leading speakers on this topic were Dr. Harold W. Dodds, secretary of the National Municipal League, Richard S. Childs of New York, Morris L. Cooke, of Phila-

delphia, and Henry P. Seidemann, of the Institute for Government Research, Washington, D. C. Another notable feature of the meeting was an address by Sherman C. Kingsley, the newly elected executive secretary of the Philadelphia Welfare Federation, on "The Human Side of Government." The last half-day was given over to general conferences on accounting and finance, civil service, and publicity promotion.

The following officers were elected for the ensuing year: president, Frederick P. Gruenberg, director of the Philadelphia Bureau of Municipal Research; vice president, R. E. Miles, director of the Ohio Institute of Public Efficiency; and secretary-treasurer, Lent D. Upson, director of the Detroit Bureau of Governmental Research.

The conference decided to hold its next meeting in Cleveland in June, 1922, and to continue the practice of separate meetings.

The first session of the Institute of Politics, recently established under the auspices of Williams College, is scheduled to be held at Williamst from July 28 to August 27. The general subject for the session is International Relations, which will be treated in its historical, political, legal, commercial and institutional aspects. Foreign lecturers and their subjects are Viscount James Bryce, "International Relations of the Old World States"; Baron Sergius A. Korff, "Russian Foreign Relations during the last Half-Century"; Stephen Panare, "Near Eastern Affairs and Conditions"; and Tomaso Tittoni, "Italian Foreign Policies." Round table conferences are to be conducted by Professors A. C. Coolidge and R. H. Lord, on Central European former Under-Secretary of State Norman H. Davis, on the reparations question; Professor J. W. Garner, on the peace treaties; Professor C. Haskins and Major Lawrence Martin, on the boundaries of new Europe; Professor J. S. Reeves, on fundamental conceptions in international law in relation to political theory and political philosophy; Dr. L. S. Rugg on Latin American questions; Professor F. W. Taussig, on tariff and tariff problems; and Professor G. G. Wilson, on unsettled questions of international law.

## BOOK REVIEWS

EDITED BY W. B. MUNRO

*Harvard University*

*Modern Democracies.* By VISCOUNT BRYCE. (New York City: The Macmillan Company. 1921. 2 vols.)

American political scientists do not need to be told that James Bryce's latest work is one of the most important ever written on the principles and practice of democratic government. Half a century has passed since Bryce, already widely known and esteemed for his brilliant essay on the Holy Roman Empire, became Regius Professor of the Civil Law at Oxford. A third of a century has passed since his masterly description and appreciation of the American Commonwealth put him at the head of all students of American government and politics. Since then he has served as a member of three British cabinets, he has been the British ambassador to the United States, and he has traveled to all quarters of the globe, always keenly interested in the institutions of the lands he visited, viewing them with the observant eye of the practical statesman and enriching his reflections with the ripe learning of the scholar. Ever alert, sober-minded but not unsanguine, the record of his travels, comprising not only the more elaborate writings, such as his observations and impressions in South Africa and in South America, but also numerous special articles scattered among many different publications, forms the most extensive and reliable body of material for the study of his times that any modern political scientist has produced.

Now he embodies the ripest fruits of these years of travel and study in two stout volumes. After some introductory considerations applicable to democratic government in general, he proceeds to a detailed comparison of the working of democracy in various countries, chiefly France, Switzerland, Canada, the United States, Australia, and New Zealand, and concludes with some general observations and reflections on the present and future of democratic government. He brings to this discussion of modern democracy not merely a wealth of knowledge,

but a breadth of sympathy and a depth of insight which give to his conclusions a matchless authority. The volumes moreover are written in an easy and graceful style which charms not less than it instructs. They are indeed, as American political scientists had expected them to be, a fitting culmination of an extraordinarily active and productive career.

The American reader will first turn to the chapters on democracy in the United States to ascertain how far Bryce has modified the views he expressed a generation ago. He will be gratified to find that the high hopes for the future of democracy, with which Bryce was sustained throughout his inquiry into the rough and too often repellent politics of the eighteen-eighties, sustain him still. "No Englishman," he writes, "who remembers American politics as they were half a century ago, and who, having lived in the United States, has formed an affection as well as an admiration for its people,—what Englishman who has lived there can do otherwise?—will fail to rejoice at the many signs that the sense of public duty has grown stronger, that the standards of public life are steadily rising, that democracy is more and more showing itself a force making for ordered progress, true to the principles of Liberty and Equality from which it sprang."

Bryce is careful to avoid personalities, which is probably wise in view of the circumstances, but one can not help wondering what he would say, were he to rewrite his earlier chapter, entitled "Why Great Men Do Not Become President," now that two of the young men; whom he learned to know when he was writing the *American Commonwealth*, have risen to the highest post in the land and have made their mark in history. Even when he refers to the difficulties which senatorial jealousy of the Executive has more than once in recent years put in the way of the best use of the treaty-making power, there is not a word to disclose any personal feeling over the failure of the arbitration treaty which he himself negotiated when his friend Taft was President, to say nothing of more recent events.

But Bryce is not blind to the faults of American democracy. He still finds in the cities of the United States the most numerous and striking illustrations of the maladies to which democratic government is liable, though with fine discrimination he does not neglect to point out how exceptional their circumstances have been, nor does he overlook the beneficial disciplinary influence of the American system of local self-government. He reinforces his earlier strictures on the personnel of the state legislatures and on the methods of law-making.

But he reserves his strongest censure for the American party system. Party organization, he observes, unlike party spirit, is a comparatively new phenomenon, first developed in the United States. "It has rendered some services, but far greater disservices, in the land of its birth, and has been more or less imitated in Australia, New Zealand, Canada, and Great Britain, in all of which it is possibly the source of more evil than good." In another place, discussing the tendency of party organizations to become ossified when left to themselves, he points out the need for independent thought to shake them up and breathe new life into them. "They exist for offices rather than for principles," he declares. "If the party system had exerted the same power over minds as it did over offices, it would long ago have ruined the country."

Next to Bryce's opinion of democracy in the United States, it is his opinion of British democracy, now triumphant under the Representation of the People Act of 1918, that will arouse the greatest interest in America. But here he is deliberately reticent. He pleads disqualification because of his long connection with British politics. Nevertheless he can not conceal his misgivings. In discussing the condition of democracy in Australia, he shows how much more democratic the Australian governments are than those of America, and then proceeds to inquire, What of Britain herself? Has not her constitution become in recent years almost as democratic as is the Australian? So far as respects its frame of government, he concedes that this is true. "In practice, however, this is not yet the case. The difference lies in the different social and economic phenomena of the two countries, and in a few traditions of public life, which, though now fast disappearing, give still more influence in old nations like England and France than tradition can have in any new country." It is evident, however, to him who reads between the lines, that the disappearance of the old traditions in England is observed by Bryce with regret, while the rise of new traditions like those whose emergence he detects in Australia is viewed with unconcealed alarm.

American readers who have known Bryce chiefly through his *American Commonwealth* have learned to regard him as an optimist. He remains an optimist, but sometimes seems to do so only by a studied effort. In his preface he candidly confesses that he has sought to repress the pessimism of experience, "for it is not really helpful by way of warning to the younger generation, whatever relief its expression may give to the reminiscent mind." He realizes that the ways of the present generation are not those of the English Liberals of the

eighteen sixties and seventies, and among whom his early principles were formed. Then democracy seemed a glorious experiment, a "leap in the dark," which men of adventurous disposition might take in a spirit of exaltation. But to the present generation democracy is a part of the environment which, like the weather, practical men may grumble at but do not take seriously as a subject for contention. The real problems of government today, such as the organization of the bureaucracy, self-government in industry, and the economic functions of the state, Bryce scarcely considers. One will search these volumes in vain for light upon the best expedients for improving the process of legislation, or the methods of administration, or, more fundamentally, the adjustment of the conflicting interests of the great self-conscious groups within the modern state, such as, in the United States, the corn-growers, the cotton-planters, the railwaymen, or the coal-miners. Bryce envisages democracy at large. Dismayed but not discouraged by the various *isms* of recent years, state socialism, guild socialism, syndicalism, communism, he puts them resolutely out of mind, and reviews the problems of half a century ago with the dauntless faith of the then youthful reformer. "So may it be said," he concludes, "that Democracy will never perish till after Hope has expired."

Thus *Modern Democracies* embodies the spirit of an epoch which has passed. It comes nearer to doing for the national state of the period before the World War what Aristotle's *Politics* did for the Greek city state prior to the Macedonian supremacy, than any book we are likely ever to possess. Containing more formal description than Aristotle's great work and less constructive criticism, it must long remain the world's fairest picture of the political age of which it treats. Bryce realizes that he is describing an age that is past, and that he can assume the manner of one who has come from a far country. No modern political scientist could have done this better, for Bryce is above all a great traveler. Since Herodotus no man of learning has been so fired with the desire to visit all lands and see all peoples with his own eyes, and no man has produced a more enlightened and dispassionate and satisfying account of what he has learned.

A. N. HOLCOMBE.

Harvard University.

*The Truth About The Treaty.* By ANDRÉ TARDIEU. (New York: Bobbs-Merrill Company. 1921. Pp. 473.)

*What Really Happened at Paris. The Story of the Peace Conference.* By the American Delegates. Edited by EDWARD M. HOUSE and CHARLES SEYMOUR. (New York: Charles Scribner's Sons. 1921. Pp. xiii, 526)

These books belong to that class of literature on the Peace Conference—small as yet—which has permanent historical value. Both are written by men who speak with authority. Of Tardieu, who was an active and influential member of the French commission, we may accept the dictum of Colonel House that “there is no Frenchman, save Clémenceau, who can write with so much authority concerning the Peace Treaty.” The authors of *What Really Happened at Paris* were members of the American commission. Each participated in the transactions at Paris which he relates, and many of them, before their arrival in Paris, had made prolonged investigations in their respective fields. To their knowledge of negotiations they add a profound knowledge of the problems considered by the negotiators. Both books, too, are remarkably free from prejudice. Tardieu, to be sure, debates his way through the subject, marshaling the arguments for the French view of the case; but in the portion of his book given to the conference he lets the negotiators speak for themselves. His pages are replete with memoranda, which served as the bases for negotiations, and with extracts from the conversations, which took place among the negotiators. Frequently he quotes the words uttered at critical junctures by Clémenceau, Wilson, or Lloyd-George. His story of the negotiations keeps faith with the title of his book. The American delegates are more calm and dispassionate in tone. They place the views expressed by the American representatives in the foreground, but they record, generally with sympathetic understanding and always with fairness, the positions taken by the representatives of other powers. Before books such as these the fog of doubt and suspicion which an ephemeral literature, based on ignorance and prejudice, has wrapped about the Peace Conference cannot retain its impenetrability.

The coöperative work surveys practically the whole field of operations at the conference, and includes also a chapter by Admiral Mayo on the “Atlantic Fleet in the Great War.” The first two chapters are introductory in character. In one, Mezes describes the extensive preparations made by the government of the United States for partici-

pation in the conference and the bases for peace existing when the conference began. In the other, Day interprets the spirit of the conference and explains its organization. His picture is similar to that given by Tardieu and utterly different from the fantastic sketch of Keynes.

The territorial settlements occupy six chapters: Haskins deals with the western frontiers of Germany, Lord with Poland, Seymour with Austria-Hungary, Johnson with Italian boundaries, Bowman with the Balkans, and Westermann with the Near East. Each writer generally presents the salient evidence which constituted the basis for a decision, describes how the decision was reached, indicating the attitude taken by the principal negotiators without attributing motives or entering upon the course of the debates, and explains the significance of the decision. These chapters form collectively a clear, concise and accurate presentation of a series of complex problems. They are illustrated by excellent maps.

Legal advisers have three chapters: Hudson treats the clauses inserted in the treaties to protect minorities and the system of mandates; Scott analyzes the clauses having to do with the trial of the Kaiser and of those accused of violating the laws of war; and Miller traces in illuminating fashion the evolution at Paris of the covenant of the League of Nations. Economic aspects are allotted four chapters: Lamont gives a well-balanced view of the negotiations on reparations; Young estimates the influences which determined the shaping of the economic clauses and combats effectively many popular misconceptions; Gompers discusses the labor clauses; and Hoover summarizes the accomplishments of the economic administration during the period of the armistice. The two commissioners who contribute say almost nothing about the negotiations. General Bliss presents a weighty argument in favor of common disarmament; while Colonel House weighs in the scales of his comprehensive knowledge the successes and the failures of the conference. The volume provides the best general survey of the whole work of the conference known to the reviewer.

Tardieu treats more fully a limited field. He writes only of those sections of the treaty with Germany which concern France most directly. For convenience of consideration his work may be divided into three unequal parts. The first two chapters are introductory to the main theme. They begin with a summary statement of the relations between Germany and France preceding the war and of the part taken by the French in the war; well designed to produce a sympathetic



attitude towards the arguments advanced later in behalf of the French claims made at the Peace Conference. The part of greatest historical value is the account, partly verbatim and fraught throughout with dramatic interest, of the conversations between the French and the English leaders which led to the unity of command under Foch. There follow a rapid survey of the events leading to the armistice and a full account, composed largely of the verbatim recital of documentary and oral evidence, of the exchange of views among the representatives of the Allied and Associated Powers through which the terms of the armistice were evolved.

The largest and the most important part of the work is concerned immediately with the Peace Conference. It treats the organization of the conference, the military clauses, the left bank of the Rhine, the treaties of guarantee, Alsace and Lorraine, the basin of the Sarre, reparations and German unity. It is primarily a narrative of the negotiations. It is not a systematic presentation of the facts involved in the problems treated by the negotiators; the facts often come out incidentally as they appear in a memorandum used by the negotiators or in the conversations of the negotiators themselves. But it gives deeper insight into the process of negotiation and fuller knowledge of the course of negotiations on several of these particular topics than any published work known to the reviewer. It is, moreover, a stirring narrative, reproducing in places the atmosphere of the conference so truly that the reader can really appreciate something of the tremendous stress and strain under which the participants labored. The final chapters take up the period since the conference. They contain significant statistical evidence of the progress of reconstruction in the devastated regions, an arraignment of the enforcement of the treaty, and a friendly but firm statement of the author's views as to the shortcomings of Great Britain and the United States with regard to the treaty since 1919.

W. E. LUNT.

*Haverford College.*

*The Political Aspects of St. Augustine's 'City of God.'* By JOHN NEVILLE FIGGIS, Litt. D. Late of the Community of the Resurrection. (London: Longmans, Green and Co., 1921. Pp. 132.)

The delivery of these lectures, six in number, was one of the last public acts of John Neville Figgis. They appear here in their original

form and are a last and convincing proof, if proof were needed, of the irreparable loss their author's death has brought to all students of the history of the development of political ideas.

It is the highest praise to say that these lectures are fully on a level with the author's earlier series on European political thought from Gerson to Grotius. There is the same mastery of materials, the same power of bridging the centuries and thinking the very thoughts of an earlier time, but combined, as in the other book, with the gift, rarely found, of following those thoughts to their latest conclusions and discussing them in the light of the most recent criticism. All this requires an equipment equaled by few and an insight almost unique. It was the development of political ideas that interested Dr. Figgis especially. It is this which he treats in all his books from the earliest to the latest, and in a way unapproached by any other books in English. The only thing comparable is Gierke's *Johannes Althusius*. This method is here applied to St. Augustine's *City of God*.

Aside from Aristotle probably no book has been cited by subsequent political writers so often as the *Civitas Dei*, and none certainly for more diverse purposes. And so, as Dr. Figgis warns us at the outset, the understanding of St. Augustine "is not easy." His book is not a systematic treatise on politics or on anything; and such a work, by one of the most varied, powerful and vivid personalities that has ever recorded itself—"the most intimate and personal of all divines until John Henry Newman"—cannot be wholly consistent. "This book itself is too great to be consistent." Little wonder, then, that St. Augustine has been regarded by some modern critics as essentially ancient, by others as medieval rather, or almost modern—as modern as Vico at least; or that the *Civitas Dei* should have become to some in the midst of later conflicts the very "visible Monarchy of the Church," while to others it was only the invisible *communio omnium sanctorum* which became one of the central ideas of Protestantism.

In this variety, or even inconsistency, of St. Augustine himself and of his interpreters lies the fascination and the difficulty of the *Civitas Dei*. The phrase "Church and State" was not properly applicable in his time, but he did write of both Church and State, and his writings were later appropriated by the champions of each. Some of the most telling parts of Dr. Figgis' lectures deal with these things, or with such questions as Augustine's denial that justice is essential to the bare existence of state, matters some of them no less important now than in the fifth century. And the author never lets us forget this importance.

In treating these subjects, Dr. Figgis gives us a conspectus not merely of the controversies in which the *Civitas Dei* played so important a part, but of the modern critical writings upon the book as well, the latter more temperate in tone than the polemics but hardly less diverse in their conclusions.

One quotation will serve to show the scope and content of these lectures: "The book has been treated as a philosophy of history finer than that of Hegel; and again as the herald of all that is significant in the 'Scienza Nuova' of Vico. Can such views be sustained? Or is it the case that St. Augustine had no notion of a philosophy of history, that his views are self-contradictory, and that only a few passages throw more than a faint light on it? That question will form the topic of the second lecture. Did St. Augustine teach that the State is the organization of sin, or did he believe in its God-given character, and desire its development? Did he teach the political supremacy of the hierarchy, and, by implication, that of the Pope and the Inquisition? Or was it of the Church as the *Communio sanctorum* that he was thinking? Does his doctrine of individual election reduce to ruins all ecclesiastical theory? These topics will occupy the third and fourth lectures. What was St. Augustine's influence on mediaeval life? Was there something almost like a 'reception' of Augustinianism followed by a repudiation at the Renaissance? Or was it that only slightly he affected political ideals in the Middle Ages? Some see the whole controversy between Popes and Emperors implicit in the 'De Civitate Dei.' Others would trace it to causes quite different. What real change came about at the Reformation? Did St. Augustine's social doctrine (apart from the theology of grace) lose all influence? Or did men retain unimpaired the idea of the *Civitas Dei*, as it had been developed? These questions will occupy the last two lectures."

C. H. McILWAIN.

*Harvard University.*

*Les Idées Politiques en France au XVIII<sup>e</sup> Siècle.* By HENRI SÉE. (Paris: Libraire Hachette. 1920. Pp. 264.)

In this book a novel and interesting method is employed. It is not a general commentary on French political ideas of the eighteenth century, nor is it merely a compilation of readings from the writers of that period. It is a very ingeniously arranged collection of brief extracts from the eighteenth century writers, selected in such a way

as to develop and clarify the various streams of thought whose torrential confluence is seen in the French Revolution. A bare minimum of comment by the author, a mere occasional sentence or paragraph, suffices to preserve the continuity of the discourse. It is indeed a method which has been very successfully employed in biography but, so far as the reviewer is aware, has not hitherto been attempted in such a field as the history of ideas. The ideas of each writer or group of writers, and not any particular works are thus analyzed, the extracts being chosen from a wide field of literature. The author is thoroughly master of his subject and marshals his material in convincing fashion.

Four distinct schools appear in the review. All recognized the need of reform but interpreted this need differently and sought to achieve it by different means. The liberal school, which falls in the first half of the century, represented by Montesquieu, D'Argenson and Voltaire, was historical in method, looked to the English government as a model, or sought to build upon the historical institutions of France such as the *parlements*, and was moderate in aim and purpose. The democratic school, of which Rousseau, Diderot, Helvetius and Holbach are the chief exponents, applying *a priori* methods and relying upon pure reason for the construction of a perfected state, was doctrinaire and absolutely intolerant of existing institutions. Its doctrine of popular sovereignty implied democracy in government. The physiocrats, of whom Quesnay and Lemercier de la Riviere are chiefly quoted, were absolute monarchists and, while urgent in their demands for reform, emphasized economic rather than purely political principles. The revolutionary school, of which Mably and Condorcet are examples, accepting the premises of their democratic predecessors, drew the ultimate conclusion of revolution as the necessary means for securing the establishment of the people's sovereignty.

The one idea which was shared by practically all the writers of the period was that of the rights of man, and this became the cardinal doctrine of the Revolution. The demand for a definite formulation of these rights precedent to the drafting of a constitution appears to have been well-nigh unanimous.

It was not to be expected that much new light could be shed upon a subject already so thoroughly investigated as the intellectual movement of the eighteenth century, but the method of presentation and the clarity and proportion of the treatment make this little book a very useful one.

WALTER JAMES SHEPARD.

*University of Missouri.*

*Our Social Heritage.* By GRAHAM WALLAS. (New Haven: Yale University Press. 1921. Pp. 307.)

Long known as a thorough student of English local government, as the biographer of Francis Place, as a member of the original Fabian Society, and as a leading professor in the London School of Economics, Graham Wallas entered the field of political theory through his *Human Nature in Politics*, which was published in 1908. Here he attacked the abstract and metaphysical methodology of contemporary political science and the current intellectualism in political psychology. His *Great Society*, published in 1914, was an effort to construct a sounder and more synthetic psychology of political behavior, modifying to some slight degree the anti-intellectualism of the earlier volume. In the present work he has endeavored to apply his socio-psychological concepts to the problems of social and political reconstruction.

Any program for social improvement must be based primarily upon the conscious effort to alter in a progressive manner "our social heritage"—the cultural equipment of man—for man's physical nature is relatively static. Our social heritage is the sole element which lifts man above the animals and contains within itself the potentiality of progress. Yet it needs continual and consciously directed change in order to adapt it to new conditions. Particularly is this true at present when our technology is on a twentieth century plane while most of the other phases of our cultural equipment are essentially on an eighteenth century level. Further, this conscious readaptation of our social heritage will in the future require more and more attention because of the rapidly evolving and dynamic civilization of this scientific and mechanical age.

This progressive alteration and harmonious reconstruction of our social heritage must be achieved through coöperative endeavor and conscious effort, though leadership is indispensable. Hence, social reconstruction is essentially a problem of improving the existing modes of coöperation. Group coöperation is as yet far from perfect. National coöperation can scarcely be said to exist except on a low emotional plane and operating under the guidance of primitive and deceptive symbols and designing propaganda. It can be improved only by securing a careful psychological and sociological study of the national group, by basing our conception of the national group upon discriminating knowledge of its members, by the progressive elevation of our reactions on national questions to a rational plane, by the purification

and reconstruction of representative government, by advancing economic justice and contentment, by giving liberty and rights a more positive and socialized import and content, by eliminating the medieval symbolism in monarchy, and by socializing and moralizing science and institutional religion.

International coöperation not only does not exist in any true sense, but it is also the most difficult thing in the world to create. It will, to be sure, be aided by perfecting national coöperation, but it requires much additional effort and is of a far different character. The social sciences must be reconstructed, so as to secure the treatment of their data and problems from the standpoint of world coöperation rather than international competition and enmity. Herd instinct and the tribal spirit, in their present nationalized manifestation, must be conquered through the progressive acquisition of accurate knowledge concerning other peoples, the subordination of instinct and emotion to rational thought, and, above all, by gradually accustoming peoples to international coöperation through ready participation in any discussion or practice which will help to build up a pattern of behavior adapted to conscious coöperative effort in the field of international relations. It will be a slow process, but, without courageous persistence until success has been attained, the peoples of the world must prepare soon to meet a worse disaster than the recent World War.

Such are the leading propositions advanced in this suggestive and timely work. The professional student of politics will probably be far more interested in some of the specific problems analyzed, particularly the discussion of the reconstruction of representative government. Chapters v-vi constitute one of the most comprehensive and incisive of recent attacks upon the pluralism and vocationalism of Cole and the Guild Socialists, and of other exponents of this principle. He holds that vocationalism develops group arrogance, breeds conservatism because men are more conservative in their professional opinions and practices than elsewhere, is based upon the conception of the identity or uniformity of men which has been discredited by differential psychology and biology, is ill-adapted to the accumulation of capital, and is seriously challenged by history. While his arguments are not necessarily conclusive and convincing, they offer a challenge to exponents of vocationalism which can scarcely be ignored. The other specific contribution of particular import for political theory is the effort in chapters vii-viii to give the doctrines of political liberty and natural rights a more constructive, positive and socialized content and implication.

It is impossible within the space available to attempt any critical appraisal of Mr. Wallas' success in executing the task which he set for himself. While most students will regard this as the most important of his triad of contributions to political theory, they will probably agree that he has suggested problems rather than solved them. Further, they will regret that the author has relied upon data so purely and solely English as the basis for his generalizations. It is probably as progressive and constructive a work as one can look for within the camp of liberal orthodoxy in social and political theory. Those who desire a greater break with tradition will proceed to Cole, Laski, and Duguit.

HARRY E. BARNES.

*Clark University.*

*Problems of To-Day.* By MOORFIELD STOREY. (Boston: Houghton, Mifflin Company. 1920. Pp. 258.)

This little volume by a distinguished leader of the Boston bar, comprises the "Godkin Lectures" delivered in March, 1920, at Harvard College. The purpose of the Godkin memorial fund is to provide for the delivery and publication of lectures upon "The Essentials of Free Government and the Duties of the Citizen," and with this purpose the subjects treated in this volume fit in admirably.

It would be difficult to find, combined with wise admonitions, a more persuasive and stimulating appeal to young citizens to cultivate an intelligent interest in all questions of public policy and to participate actively and constantly in the work of practical politics than is to be found in the first of these lectures on "The Use of Party." This lecture deserves to be reprinted in pamphlet form and sent to at least every senior in our colleges and universities. A thousand dollars could not be better expended than in some such form of "Americanization work."

In the lecture on "Lawlessness" attention is directed to the "growing tendency to ignore or disobey the law"; and "conspicuous examples of dangerous lawlessness" are found in recent declarations of labor leaders, in the political dangers inherent in government operation of the railroads, in instances of mob violence and infringements upon the right of free speech, and in the enforcement of constitutional prohibition, which brings us "face to face with a great contest between law and lawlessness."

In his treatment of "Race Prejudice," the lecturer applauds the loyalty of our negro population during the War; mercilessly flays the custom of lynching; censures the failure of southern states adequately to provide for negro education; vigorously protests against the suppression of the negro vote; and denounces the Sinn Fein and other un-American activities of hyphenated citizens.

In the two remaining lectures, "The Labor Question" and "Our Foreign Relations" are treated in the same incisive and trenchant, yet restrained, manner which characterizes the entire series. Indeed, there is no exaggeration in the publisher's statement that the author "writes always with penetration, lucidity, and a wealth of illustration, and from a point of view at once progressive and well balanced."

P. ORMAN RAY.

*Northwestern University.*

*The Non-Partisan League.* By HERBERT E. GASTON. (New York: Harcourt, Brace and Howe. 1920. Pp. vi, 325.)

Mr. Gaston's book is a good illustration of the statement made by James Bryce in the *American Commonwealth* to the effect that the federal system of government allows local political experimentation on a small scale. North Dakota and twelve other states, all located west of the Mississippi River except Wisconsin, have been experimenting with a new political organization called the Non-Partisan League. While the league has elected officers in each of the thirteen states, it is in North Dakota only that it has taken possession of the government and has realized any part of its program.

Mr. Gaston in twenty-four short chapters tells the story of the organization, methods and initial successes of the league in an interesting and at the same time sympathetic way. For three years he had charge of the publications of the league and consequently speaks as an "insider." He shows that the organizers of the league started with the idea that the farmers are an exploited class, who, in order to secure justice, must capture the government. Economic life in North Dakota is comparatively simple, dominated as it is by the agricultural interests. This made it comparatively easy to organize the farmers after they came to believe that they were being robbed by false grading and mixing of grain in the "chain elevators" which had their headquarters in the big terminal grain markets. Mr. Gaston finds the beginnings of coöperation in North Dakota in the small country stores, farmers'



elevators and in the "Equity Coöperative Exchange." Next came the demands for a primary system of nominating candidates for office, for the popular election of United States senators and for an amended state constitution which would allow the state to own terminal elevators outside of the state.

In 1915 a real leader, A. C. Townley by name, came forward with a plan of action which resulted in the organization of the farmers to achieve an economic program through political action. Gaston clearly states that Townley did not plan to launch a new political party, but rather to organize an economic group that would take advantage of the primary system of nominating to capture the machinery of the dominant party, which happened in North Dakota to be Republican. The organization is non-partisan only to the extent that it takes possession of one political party in one state and another political party in another state. It is no respecter of political parties. This organization, using these new methods of political action, won a partial victory in North Dakota in 1916 and a sweeping victory in 1918, capturing all three branches of the state government. In 1919 the new farmers' government enacted and put into operation the industrial program for which it had been contending for several years.

The legislature (1) created an industrial commission to control state-owned financial and commercial industries; (2) provided for state-owned grain warehouses, elevators, flour mills and provided for a state bond issue of five million dollars as working capital; (3) created the bank of North Dakota with an initial capital of two million dollars to be supplied by a state bond issue, the bank to be a depository of public funds and to act as a reserve bank for all state banks wishing to become members; (4) created a home building association; (5) provided for a graduated income tax and for a state hail insurance fund; (6) exempted all farm improvements from taxation; (7) classified all land for taxation purposes; (8) created a workmen's compensation commission; (9) regulated hours and conditions of work for women; (10) provided for strict mine inspection; (11) levied a half-mill tax to buy homes for returned soldiers; (12) passed a new distance tariff act to prevent railroad discrimination.

The constitutionality of the above legislation has recently been upheld by the United States Supreme Court, in the case of *Green v. Frazier* (40 Sup. Ct. 499).

Mr. Gaston in the last chapter of his book makes the following statement: "In the light of the accomplishments in North Dakota

the sincerity and honesty of the purposes of the men in charge of the League movement can scarcely be disputed. Their aim plainly has been to free the market from abuses, to liberate the state from thralldom to great market and financial centers, to stimulate agriculture, to make rural life more agreeable and socially endurable, to make it easier to acquire and to retain home ownership and productive independence and to conserve so far as possible the wealth and production of the state for the people who live in it."

The league now has more than two hundred thousand members in thirteen different states. Its program in North Dakota has not been in operation long enough to pass judgment upon its success. In the campaign of 1920 the league made little headway in other states and lost control of the legislature of North Dakota but reelected Governor Frazier. Mr. Gaston's book is a frank account of a most interesting attempt at class government under the guise of state socialized industries and business.

J. S. YOUNG.

*University of Minnesota.*

*The Story of the Woman's Party.* By INEZ HAYNES IRWIN.  
(New York: Harcourt, Brace and Company. 1921. Illustrated  
from photographs. Pp. 468.)

The closing chapter of the struggle for the franchise, with its heated controversy over militant methods, is perhaps too recent to admit of historical perspective. Partly for this reason, Mrs. Irwin's account of the Woman's Party is most valuable, not as political history, but as a picture of the brilliant statesmanship of the young Quakeress who led the fight from 1912 to the ratification of the amendment in 1919. Few who know the history of woman suffrage during that period would doubt that without the leadership of Alice Paul the Nineteenth Amendment would not be part of the Constitution to-day.

Dauntless, imaginative, impersonal, and wholly without the bitterness of most fighters, Miss Paul drew the efforts of others to her plans and inspired devotion which helped to win the fight. With a wealth of anecdote, the narrative makes it clear that she never once departed from the policy taught her by her English experience: that of holding the party in power responsible. It was urged upon her that this method was inapplicable in a country which has no actual party government, but in the end the Democratic leaders, from the President down,

were driven to accept responsibility. When she formed the Congressional Union in 1913, Alice Paul had convinced her followers that all effort should be put in one direction, that of securing the passage of the amendment. The state organizations were built solely for this end, first, to use the power of the already enfranchised women in the western states, and, second, to secure the ratification by the thirty-six state legislatures.

The volume seems almost cluttered with the mass of quotations from contemporary letters and diaries, newspapers, court records and campaign speeches. The "honor lists" of those arrested are carefully set forth with the story of each arrest. The descriptions of the "suffrage special," the lobbying, the White House pickets, the watch fires, the mail experiences, the burning of the President's words, and the marvelously effective pageantry, so constantly employed, not only chronicle a chapter of profound social and political significance, but reveal new possibilities in dramatic and esthetic appeal in this field.

Whatever is lost in the omission of the relation of the militant effort to the rest of the suffrage movement and its connection with other questions of the day is largely made up in the colorful detail which the novelist author has so tellingly used and in the appreciation she has shown for the *camaraderie* which characterized the work of the groups of women and distinguished it in the field of political endeavor.

AMY HEWES.

*Mount Holyoke College.*

#### BRIEFER NOTICES

For exact and trustworthy information concerning the way in which the American Expeditionary Forces were raised, transported to France, and supplied with munitions of war, no work hitherto published compares with *The Road to France* by Benedict Crowell and Robert Forrest Wilson (Yale University Press, 2 vols., pp. 675, paged consecutively). These two volumes contain a comprehensive and accurate narrative of the early preparations, the mobilization of the regulars and the national guard, the workings of the selective service law, the building of the cantonments, the movement of the army to the ports, the embarkation service and the convoys, the quest for cargo vessels—the whole process of war-making which preceded the arrival of the troops and supplies on the other side of the Atlantic. But although the pages are well packed with information they are never dull or unin-

teresting. The writers display fine discrimination in selecting the things which really counted during the great emergency; they lose no opportunity to let their readers see the picturesque aspects of the nation's steady effort, and they have a far keener appreciation of the really humorous situations than most of those who have been writing about America's part in the war. It was not all plain sailing, this job of depositing two million able-bodied men in France, and the writers do not try to gloss over the numerous mishaps, some of which seem humorous in retrospect but were accounted serious enough in the gloomy autumn of 1917. There are some splendid chapters in both volumes—good history and good literature as well. No red-blooded American can read the tale of the troop convoys, as it is here related, without a thrill of pride and satisfaction. It is risking little to predict that these volumes, well-planned, well-written, and well-printed, will find a wide circle of interested readers.

No publication of its sort in recent years has stirred up a more fervid discussion in English political circles than *The Mirrors of Downing Street* by an author who conceals his identity under the pseudonym of "A Gentleman with a Duster" (G. P. Putnam's Sons, pp. 171). The book contains characterizations, about a dozen pages apiece, of thirteen contemporary British leaders, among them Lloyd George, Mr. Asquith, Mr. Balfour, Mr. Winston Churchill and Lord Northcliffe. The "reflections" of these figures, as viewed in the mirror, after it has been duly dusted, are not in all cases flattering, but they appear in these pages with a sharpness of outline which most pen portraits do not achieve. Guesses concerning the author's identity have covered a considerable range; he is at any rate someone who gets his information at close range and puts it into print with a practiced hand. The analyses of character and motives are clever, incisive and often strongly unsympathetic. Some of them are such as displease the friends and delight the enemies of public men. Those who have taken the conventional accounts of English political maneuverings as implicitly as though they were gospel will find some ruthless smashing of idols in these pages. No mere adventurer in politics or literature could have painted this picture gallery; it is obviously the work of a skilled craftsman. Right or wrong in his estimates, the anonymous author has given us a book that is certainly worth reading. If no criticism is so good for public men as criticism of character, he may also claim to be a public benefactor.

The long-awaited third volume of Bismarck's autobiography has been published by Messrs. Harper and Brothers under the title *The Kaiser vs. Bismarck* (203 pp.). Professor Charles Downer Hazen, who contributes the introduction, regards the contents of the volume as "the most extensive, the most detailed, and the most authoritative account of an important and dramatic turning-point in modern history." To the student of German political history it is certainly quite as important as the Iron Chancellor's earlier reminiscences and it is likely to be more widely read. The larger portion of the book deals with happenings directly or indirectly connected with Bismarck's resignation; the correspondence bearing upon this event is printed in full. On the whole the documents indicate that the outside world, in forming its own opinions as to the causes which led to the "dropping of the pilot" in 1890, did not go far astray. Its general diagnosis of the trouble was correct. The details are now filled in and they are highly interesting. No wonder the ex-Kaiser tried to hush these memoirs. The letter which his own father sent to Bismarck in 1886, in which mention is made of the future Kaiser's "leaning towards vanity" and "overweening estimation of himself," is one that any monarch might be pardoned for desiring to suppress. The shade of the Chancellor is having a sweet revenge.

Another volume of political disclosures which a monarch would fain have put out of the way is now printed by Messrs. Doubleday, Page and Co., *The Memoirs of Count Witte* (pp. 434). The ill-fated Czar of All the Russias made repeated attempts to get hold of Witte's personal papers but their owner was shrewd enough to keep them; during the later years of his life, in the vaults of a foreign bank under another person's name. Witte is very hard on Nicholas and the whole court clique, which he blames for most of Russia's troubles before the war. There is an enlightening account, from the Russian viewpoint, of the origins and course of the Russo-Japanese war and a full narrative of the negotiations at Portsmouth. Additional information concerning the abortive Treaty of Björkoe is included, and it is material which places neither the Czar nor the Kaiser in a very favorable light. As a commentary upon the Kaiser's diplomatic *gaucherie* this concluding chapter of Count Witte's book will hardly be surpassed, and it would be difficult to unearth in modern history a more spineless mortal than the Czar proved himself to be when he signed the covenant of treachery. Fortunately for the peace and well-being of the world Count Lamsdorff

was able to have the document committed to the waste-basket. American readers will find many interesting revelations in this book, for example (pp. 408 ff.), where an attempted conspiracy to unite Europe in a tariff war against the United States is uncovered. Count Witte was not inclined to underestimate his own abilities, as any reader of these memoirs can easily see, nor was he an adept in curbing his own personal animus towards those who stood in his way. Yet his patriotism was beyond question, and Russia might have been saved from her overwhelming catastrophes if there had been enough Wittes in the seats of the mighty at Petrograd.

A book on reconstruction problems which has been commanding widespread interest during the past couple of months is Paul Scott Mowrer's *Balkanized Europe* (E. P. Dutton and Co., pp. 349). The author spent eleven consecutive years in various European countries as special correspondent for the *Chicago Daily News*, and some of the material in his book has already appeared from time to time in that journal, but it is both valuable and interesting enough to warrant the appeal which the publishers make to a broader constituency. By "Balkanization" the author means the creation of a medley of small states, "economically weak, covetous, intriguing, afraid, a continual prey to the machinations of the great powers, and to the violent promptings of their own passions." This policy, which had its origin in the regions freed from Turkish oppression during the nineteenth century, has been extended, according to Mr. Mowrer's argument, over a considerably greater portion of Western Europe by the Peace of Versailles. With this thought as a guiding thread the author takes his readers through the complex maze of minor European politics in a series of concise and stimulating chapters. The concluding portion of the book discusses the policies of the great powers at the present time and explains what the writer believes to be the proper rôle of the United States in world politics. Both the method of presentation and the style are those of a journalist, but a capable journalist is usually a keen observer, as this volume amply proves.

Two recent books by Frederic C. Howe deal with rather dissimilar subjects. *Revolution and Democracy* (pp. 238) is published by B. W. Huebsch. It deals chiefly with the control of "privilege" over politics, the press and education, especially in the United States, but it also has a good deal to say about monopoly and the sabotage of industry,

transportation and credit which results from monopoly. The government of the United States, in its present complicated and unresponsive form, is merely the agency of the exploiting classes (p. 103). Exploitation, as opposed to production, is the controlling motive of both the leading political parties in America (p. 123). The political state, in America as in old Europe, has become a private thing, used to protect private interests; it has little concern for human rights or for the promotion of the comfort, happiness or convenience of the people (p. 124). What America needs is a homeopathic dose compounded of the single tax, guild socialism and the Plumb plan, with a system of free credit "to enable those who possess no capital to secure capital." The other work, entitled *Denmark, A Coöperative Commonwealth* (pp. 203) is from the press of Harcourt, Brace and Howe. It endeavors to interpret for America the progress made by the Danish people in scientific agriculture, organized coöperation, politics and education, the whole forming what the author believes to be the most valuable political exhibit in the modern world, namely, a demonstration of the possibilities of democracy, industrial as well as political. After reading Mr. Howe's books one is inclined to believe that Shakespeare was wrong and Barnum was right. There is nothing rotten in the state of Denmark, and the great American public likes to be humbugged.

In making *A Defence of Liberty* (Putnams, pp. 251), the Hon. Oliver Brett argues that socialism would mean a dangerous reaction toward conservatism—a static state with unlimited power. This insistence on bureaucracy as the antithesis of liberty is not particularly new, but Mr. Brett makes his points interestingly and with occasional flashes. Thus, for example, he remarks that Rousseau is "the uneugenic parent of" the "intellectual sophistry," that "the old world has passed away under the stress of war, and that a new one is about to spring fully-armed from the brains of the Welsh wizard." Rousseau "loved to leave the sickly offspring of his brain on the doorstep of posterity, to be picked up and nursed, like cuckoos in the social nest, by the Karl Marxs and Lloyd Georges that came after him." With the exception of some suggested reforms of Parliament and the party system, Mr. Brett makes no constructive proposals. When one school of opinion says that society needs only a tonic, and another that a major operation is necessary, Mr. Brett offers a mouth wash. His mild liberalism may comfort the few remaining faithful, but it will not convert many sinners.

*The Principles of Politics* by A. R. Lord (The Clarendon Press, pp. 308) is called "a textbook for junior students" of political theory. It is more elaborate than Sir Frederick Pollock's *Introduction*, which has so well served a whole generation of college students, yet much less so than the works of Sidgwick, Green and Bosanquet in the same general field. Professor Lord's outline begins with the Renaissance and ends with Burke. The few pages on Hamilton and Madison, thrown in for good measure, are not of much account. The greater portion of the book is not historical but analytical, successive chapters being devoted to such topics as sovereignty, democracy and representation, the notion of law, individualism, natural rights and political rights. These chapters are cogent and well-written; they would serve admirably as a basis for class-room discussion.

Arthur J. Balfour's *Essays Speculative and Political* (George H. Doran Co., pp. 241) cover a rather wide range. The initial essay on "Decadence" raises the question why civilizations wear out and great nations decay. The author finds that the explanations customarily given for the decline and fall of the Roman Empire do not fully explain the great collapse. Nor does he feel able to explain it himself. The concluding essays of the book, notably those on "Anglo-German Relations" and on "The Freedom of the Seas" are of permanent value and interest.

A very useful addition to the rapidly growing library on the international aspects of labor legislation is a collection of essays edited by E. John Solano under the title *Labour as an International Problem* (Macmillan, pp. lx, 345). The contributors are well known authorities on the subjects they discuss. They include G. N. Barnes, Arthur Fontaine, Émile Vandervelde, J. T. Shotwell, Albert Thomas, W. A. Appleton, and Sophy Sanger. The essays review the history of international labor legislation; the constitution, functions, procedure and policy of the International Labor Office and its work ending with the conventions and recommendations passed at the International Seamen's Conference held in Genoa, July, 1920, and international trade unionism. Appendices give the labor sections of the peace treaty and the resolutions adopted at the Berne (1906), Washington, and Genoa conferences.

Walter Rathenau's *Die neue Wirtschaft*, a book which has been commanding wide attention in Germany, is now issued in an English



translation under the title *The New Society* (Harcourt, Brace and Howe, pp. 147). The author ranks as one of Germany's industrial leaders. During the war he served as controller of raw materials. Rathenau does not accept either restoration, democracy, socialism or communism as Germany's "way out," but himself propounds a program for the adjustment of industry and government. The book is full of sharp thrusts at the shams of the old régime and the hypocrisies of the new. Rathenau suggests, by the way, that Germany ought to prohibit the use of the word *Kultur* for thirty years to come. It has served no purpose in the past save to mask confusion of thought. The only possible future for Germany, according to Dr. Rathenau, lies in making herself what she thought she was but was not, a nation of men and women who think for themselves.

Vivid pen pictures of various notables, English, French and American, are included in Stephane Lauzanne's *Great Men and Great Days* (D. Appleton and Company, pp. 263). As editor of *Le Matin* the author has had rare opportunities for contact with most of the world-figures whose characteristics he delineates. The portrait of ex-President Wilson is one of the best in the book and indicates that the author knows how to hold the scales of equity in weighing the services of public men. Some incidents not commonly known are printed in this chapter, for example the substance of the interview given to several French newspaper correspondents at the White House on April 9, 1918 (pp. 88-90). M. Lauzanne writes of interesting things in a fascinating way.

*The Senate of the United States*, by Senator Henry Cabot Lodge (Charles Scribner's Sons, pp. 248), is the title of a volume which covers a range of matters from legislatures to libraries. An essay of thirty-one pages, reprinted from the *Political Quarterly*, where it appeared in 1914, deals with the American Senate, its history, functions and place in the government. The rest of the book, seven-eighths of it, has nothing to do with the Senate, either proximately or remotely, but spreads before its readers eight of Senator Lodge's addresses and essays, including his eulogies of Theodore Roosevelt and the pilgrims of Plymouth. All of them are excellent both in substance and style; they testify to the author's breadth of interest, his finished scholarship and his mastery of English prose.

The story of a court that "aims to give justice to the public in labor disputes" is narrated by Governor Henry J. Allen in *The Party of the Third Part* (Harper and Brothers pp. 282). This book describes the events which led to the establishment of the Industrial Relations Court in Kansas, recounts the history of the coal strike, the receivership, the volunteer mining and the reaction in public sentiment which followed. The make-up and powers of the court are explained and the various phases of its work are discussed. There are several chapters on general questions connected with labor and the public's relation to industrial controversies. While written from the standpoint of a public official the book is notably fair and liberal in its general attitude. As an authoritative exposition of a significant American experiment it is of unusual value to students of state government.

Written as a text for college freshmen, Irwin Edman's *Human Traits and their Social Significance* (Houghton, Mifflin Co., pp. 467) endeavors "to give a bird's eye view of the processes of human nature, from man's simple inborn impulses and needs to the most complete fulfilment of these in the deliberate activities of religion, art, science and morals." Believing that the student's understanding of contemporary problems in government and economics can be "immensely clarified" by a knowledge of the human factors which they involve, the author analyzes the types of individual behavior and the great activities of the human mind with special emphasis on the social consequences of individual traits. The book should be very serviceable for use in a college course on social psychology.

An English translation of Dr. F. Müller-Lyer's *Phasen der Kultur* has been brought out by Alfred A. Knopf under the title *History of Social Development* (pp. 362). The chief value of the book is its serious attempt to treat sociology as an inductive study by distinguishing, describing and correlating the successive stages through which human societies have in fact evolved. The author works from sociological facts to phases of culture, and from the latter to lines of progress. In this way it aims to acquaint the reader with the results of what the author designates as a "new and glorious, although unfortunately still imperfect, science."

A monograph on *The Ratification of the Federal Constitution by the State of New York* by Clarence E. Miner has been issued as one of the

recent volumes of Columbia University Studies in History, Economics and Public Law (Longmans, Green and Co., pp. 136). The author has done his work with great thoroughness and devotes attention not only to the proceedings of the Poughkeepsie convention but to the line-up of political parties preceding it.

Among recent publications of the Harvard University Press are Frederick J. Allen's *Guide to the Study of Occupations* (pp. 182), John H. Williams' *Argentine International Trade under Inconvertible Paper Money, 1880-1900* (pp. 282), and Julius Klein's *The Mesta, A Study in Spanish Economic History, 1273-1836* (pp. 444). The last-named monograph contains a narrative of Spain's long attempt to dominate the production and marketing of the world's wool supply.

President Thwing's *American Colleges and Universities in the Great War* (Macmillan Co., pp. 276) deals only incidentally with matters of government. In the main it is an account, comprehensive and well-written, of what American institutions of learning did to help win the war. A concluding chapter points out some of the enduring effects of the war upon methods of college education.

Professor E. L. Bogart's *War Costs and their Financing* (D. Appleton and Co., pp. 510) presents in broad outline but with adequate detail the salient features of war finance and explains the more important financial problems now confronting the chief countries of the world. The author shows how large a part the "silver bullets" played in determining the final outcome. The book admirably supplements Professor Bogart's earlier volume on the *Direct and Indirect Costs of the Great World War*.

A discussion of the distribution of wealth from some new points of view is contained in Hugh Dalton's *Inequalities of Incomes in Modern Communities* (George Routledge and Sons, pp. 357). The author examines the causes which have produced the marked inequalities of individual income, including the laws and customs relating to the disposal of property. He advocates the piling of additional taxes upon inherited wealth, but also urges that the improvement of our educational facilities will tend to reduce inequality. A criticism of the orthodox theories of distribution is included.

The Russell Sage Foundation has issued a *Social Workers' Guide to the Serial Publications of Representative Social Agencies* (pp. 174). It lists the serial publications of approximately four thousand institutions and organizations. The Foundation has also published a small monograph on *The Social Case History*, by Ada Eliot Sheffield, and a summary of the findings of the Springfield Survey, under the title *Social Conditions in an American City* (pp. 439). The latter book is edited by Shelby M. Harrison and contains a chapter on "City and County Administration."

Messrs. Longmans, Green and Co. have published a brief *Introduction to Sociology* (pp. 304) by Professor J. J. Findlay of the University of Manchester; The book does not cover all the topics which are ordinarily found in a textbook of sociology but deals with the more important ones only.

The Century Co. has published a volume on *Sea Power in American History* (pp. 372) under the joint authorship of Herman F. Krafft and Walter B. Norris, both of whom are associate professors in the United States Naval Academy. The authors point out that although Admiral Mahan constantly discussed the influence of sea power upon American history, and even dealt exhaustively with some periods, he never incorporated his general conclusions in any single volume. The present writers have brought Mahan's ideas together; they have also added some good material of their own. Particularly valuable is their discussion of the merchant marine in its relation to sea power.

Messrs. Little, Brown and Co. are the publishers of Professor George Grafton Wilson's *First Year of the League of Nations* (pp. 94) in which the author sets forth, concisely and impartially the procedure and achievements of the league during the first twelve months of its existence. From the reports and proceedings of the Geneva meetings the author has winnowed the salient things and presents them in an interesting narrative. The full text of the covenant is printed as an appendix.

*American Economic Life* by Henry Reed Burch (Macmillan Co., pp. 533) is a presentation in problem form of the more important phases of American economic activities. It is intended for elementary students of economic science, particularly in secondary schools and appears to be well adapted to its purpose.

The main argument of *Economic Democracy* by C. H. Douglas (Harcourt, Brace and Howe, pp. 144) is directed to the task of proving that democracy is not merely a matter of elective administration but of "distributed economic power." As for the League of Nations the author believes that its success would merely mean the culmination of the policy of centralized economic control.

*Our Revolution* by Victor S. Yarros (Richard G. Badger, pp. 251) contains a collection of essays in which the author seeks to interpret the social and political unrest.

The volume on *The Church and Labor* by the Rev. John A. Ryan and the Rev. Joseph Husslein (Macmillan Co., pp. 305) is the first of a series in which the endeavor will be made to present, adequately and authoritatively, the Catholic point of view towards the industrial, social and political problems of to-day. The book is made up, in large part, of encyclicals, pastoral letters and other deliverances of church authorities relating to the labor question. A list of "books by Catholic authors" on economic questions is appended.

*Housing and the Public Health* by Dr. John Robertson (Funk and Wagnalls Co., pp. 159) is a brief treatise by one who has dealt with his problem at first hand. The book relates to conditions in English cities only, but discusses the whole problem in a broad and interesting way.

A comprehensive study of community life and institutions is included in *America via the Neighborhood* by John Daniels (Harper and Brothers, pp. 463). There are excellent chapters on the organization and work of social settlements, likewise on the relation of immigrant colonies to political organization and government.

A volume on *Community Organization* by Joseph Kinmont Hart has been brought out by the Macmillan Company (pp. 230). It is the outgrowth, in large part, of the author's experience with the war camp community service.

*The Next War* by Will Irwin (E. P. Dutton & Co. pp. 161) is a loud warning against the "militarists, munition-makers and professional patriots," who are alleged to be already engaged in leading mankind into a new chasm of destruction. The author, who is a war corre-

spondent of note, writes vividly of the miseries which the late war brought in its train and makes some definite proposals concerning the means by which, in his opinion, future wars may be avoided.

*The Evolution of Sinn Féin* (Huebsh, pp. 318) by R. M. Henry gives a resumé of the origin, spread and aims of this movement. The author indicates the various stages through which the Irish question has ultimately reached a critical stage.

The second series of lectures on the Bennett Foundation at Wesleyan University, delivered by Professor George M. Wrong of the University of Toronto, have been published by the Abingdon Press under the title *The United States and Canada* (pp. 191).

A textbook on *Civil Government for Indian Students*, by Professor James W. Garner of the University of Illinois and Hon. Sir William Morris, governor designate of Assam, has been published by S. C. Sanial (Calcutta). This includes several chapters on the general principles of government and brief accounts of the governments of the British Empire, the United States and British colonies, and deals more at length with the new government of India. Appendices give the text of the Government of India Act, 1919, the Bengal electoral rules, and the report of the joint committee of the British Parliament on the Government of India bill.

Two small volumes on *Currency Reform in India* and *Indian War Finance*, by Professor W. G. Kale of Fergusson College, Poona, India, have been published by the Aryabhusan Press.

Frances Kellor's volume on *Immigration and the Future* (George H. Doran Co., pp. 276) contains a survey of past immigration and a study of the sources from which the immigration of the future is likely to be drawn. There is a good chapter on the relation of immigration to business. A supplement to this work, by the same author and publisher, deals with *The Federal Administration and the Alien*.

The Newmarch Lectures for 1919 by Sir Josiah Stamp have been published as *The Fundamental Principles of Taxation* (Macmillan Company, pp. 201). The lectures deal with the general trend of recent developments in taxation and indicate the need for a restatement of principles.

A revision of Robert H. Montgomery's *Income Tax Procedure* has been issued by the Ronald Press Co. (pp. 1206). The new addition contains the multitude of new rulings made during 1920 with the author's comments thereon, making a book which is indispensable to all who have much to do with income tax matters. The same publishers have issued a useful manual on the *Elements of Bond Investment* by A. M. Sakaloski (pp. 158), and a two-volume treatise on *Practical Bank Operation* by L. H. Lupton (pp. 713, paged consecutively).

Students of English economic history will welcome the succinct story of the enclosure movement which is set forth in W. H. R. Curtler's *Enclosure and Distribution of our Land* (Clarendon Press, pp. 334). It covers the subject in a broad way from the earliest times to the present day.

In his recent volume on *Spain's Declining Power in South America* (University of California Press, pp. 440) Professor Bernard Moses deals with the period from 1730 to 1806, following logically the author's earlier work on *The Spanish Dependencies in South America*. It will doubtless prove to be a book of equal interest and value to students of colonial administration.

The various addresses delivered at the Clark University Conference of 1920 have been printed, under the editorship of Professor George H. Blakeslee, in a volume entitled *Mexico and the Caribbean* (G. E. Stechert and Co. pp. 363). The addresses deal with every phase of Mexican-American relations as well as with conditions in Haiti, Santa Domingo and the Central American Republics.

A biography of the French war-premier *Le Vritable Clémenceau* by Ernest Judet has been issued by the press of Ferdinand Wyss, Berne (pp. 362). The study is reasonably impartial but with a tendency to betray the author's warm sympathies.

*The Young Citizen's Own Book* by Chelsea Curtis Fraser (Thomas Y. Crowell Co., pp. 309) is an elementary text book of civics which covers the ground, or most of it, in a simple and reasonably interesting way. Its selections of topics is better than that of most books in the same field.

Sydney Herbert's *Nationality and its Problems* is published by Messrs. E. P. Dutton and Co. (pp. 173). The book deals with the nature of nationality and nation-making forces, with nationality and politics and with the future of nationality. The author keeps close to his topic and supports his argument with a wealth of historical illustrations.

The Yale University Press has published Lawrence H. Gipson's *Jared Ingersoll* (pp. 432). This study of American loyalism in relation to British colonial government was awarded the Porter prize at Yale in 1918. Dr. Gipson's volume throws a good deal of light upon certain aspects of the complex relationship existing between England and the American colonies during the later colonial period.

A small booklet on *Social Legislation in Illinois*, by Seba Eldridge, has been published by W. M. Shimmin and Co. (Rockford, Ill.).



## RECENT PUBLICATIONS OF POLITICAL INTEREST

### BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

#### AMERICAN GOVERNMENT AND PUBLIC LAW

##### *Books*

*Allen, Henry J.* The party of the third part. The story of the Kansas industrial relations court. Pp. 283. N. Y., Harper's.

*Anderson, William.* A history of the constitution of Minnesota. In collaboration with Albert J. Lobb. Minneapolis, Univ. of Minn.

*Andrews, Matthew Page.* American history and government. Pp. xii+528. Philadelphia, J. B. Lippincott.

*Bailey, E. A.* Influences toward radicalism in Connecticut, 1754-1775. Pp. 252. Northampton, Mass., Smith College.

*Blachly, F. F.* Financial system of the state of Oklahoma. Pp. 66. Univ. of Okla.

*Buttree, J. Edmund.* The despoilers. Pp. 314. Boston, Christopher Pub. Co.

*Canadian Reconstruction Association.* The nonpartisan league in North Dakota: a study of class war and its disastrous consequences, together with a comparison of bank services in Canada and western states. Pp. 96. Toronto, Canadian Reconstruction Assn.

*Crowell, Benedict, and Wilson, Robert Forrest.* The road to France. 2 vols. New Haven, Yale Univ. Press.

*Emrich, John Oscar.* The voter's guide; a digest of the election laws of Pennsylvania; a complete description of the method of holding all elections in this state. Rev. and enl. Pp. 153. Pittsburg, William G. Johnston Co.

*Fabela, Isidro.* Los Estados Unidos contra la libertad. Estudios de historia diplomática americana. Pp. 312. Barcelona, Talleres Gráficos "Lux."

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*James, Herman G.* Local government in the United States. N. Y., Appleton.

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*Malcolm, George A.* The constitutional law of the Philippine Islands. Pp. xxiii+702. Lawyers Cooperative Pub. Co.

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*Oakey, Francis.* Principles of government accounting and reporting. Pp. xxi+561. N. Y., Appleton.

*Starkey, G. W.* Maine, its history, resources and government. Pp. x+249. Boston, Silver, Burdett & Co.

*Wheaton, Carl Crumbie.* Cases on federal court procedure; together with judicial code, equity rules, forms, and questionnaire. Pp. viii+758. Chicago, Callaghan & Co.

#### Articles

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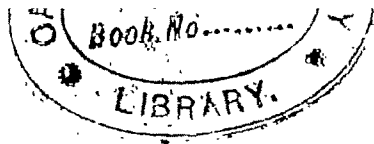
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## SOME CONTRIBUTIONS OF SOCIOLOGY TO MODERN POLITICAL THEORY

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### I. SOCIOLOGY AND POLITICAL SCIENCE

The fact that a sociologist has been requested to appear upon the program of the American Political Science Association is in itself far more significant than any remarks which may be made upon the subject of the relation of sociology to political theory. It is an admission that some political scientists have at last come to consider sociology of sufficient significance to students of politics to be worthy a brief survey of its contributions to modern political theory.

Many of the more liberal and progressive political scientists will doubtless ask themselves if this is not erecting a man of straw, and will inquire if there was ever a time when political scientists were not willing to consider the doctrines of sociology. One or two brief reminders will doubtless allay this suspicion. It was only about twenty years ago that a leading New York daily is reputed to have characterized a distinguished American sociologist as "the fake professor of a pretended science." About a decade ago an ex-president of this association declared in a twice published paper that sociology was essentially worthless and unscientific and that all of its data had already been dealt with more adequately by the special social sciences. The only

good he could see in sociology lay in some vague value in "the streams of sentiment from which the sociological fogs arise."<sup>1</sup> An eminent ex-president of the American Sociological Society retorted that this writer admittedly preferred "obscurantism in the company of Oxford and Cambridge to unbiassed search for truth."<sup>2</sup> Much more recently one of the most brilliant, original and progressive of American political scientists complained that sociology has done little more than "wander around in the dim vastness of classified emotions, touching neither the substantial borders of the state on the one hand nor the equally tangible structures of commerce and industry on the other."<sup>3</sup>

At present, however, it will probably be conceded in most quarters that the time has arrived when the old lion, political science, may lie down in peace with the young lamb, sociology. In fact it is highly probable that most of the trouble in the beginning arose from the unseemly and awkward youthful gambols of the lamb and its somewhat preposterous threat to swallow the lion. Comte, who is conventionally regarded as the "founder" of sociology, proposed to absorb all of the special social sciences in a single unitary science of social phenomena. Herbert Spencer embodied a very thorough and comprehensive treatment of political problems, both of genesis and of structure and function, in his systematic survey of sociology. From this side of the Atlantic there appeared in the writings of Lester F. Ward an even more dithyrambic description of the lofty position of sociology:<sup>4</sup>

<sup>1</sup> Ford, *American Journal of Sociology*, Vol. 15, pp. 96-104. The desirable historical introduction to this article is provided by my article on "Sociology before Comte," in the *American Journal of Sociology*, September, 1917; and Dunning's *Political Theories from Rousseau to Spencer*, pp. 345-7, 377-407. Much the best brief survey of modern sociological doctrines is to be found in Ross, *Foundations of Sociology*, pp. 256-352. The most satisfactory history of sociological theory in English is L. M. Bristol, *Social Adaptation*.

<sup>2</sup> Small, *American Journal of Sociology*, Vol. 15, p. 259.

<sup>3</sup> *New Republic*, November 17, 1917, supplement, p. 3.

<sup>4</sup> Ward, *Pure Sociology*, p. 91. The Dewey library classification also gave sociology a generic and comprehensive significance which few sociologists have ever had the audacity to approve, but it helped to alarm the political scientists and economists.

"The special social sciences are the units of aggregation that organically combine to create sociology, but they lose their individuality as completely as do chemical units, and the resultant product is wholly unlike them and is of a higher order. Sociology, standing at the head of the entire series of the complex sciences is enriched by all the truths of nature and embraces all truth. It is the *scientia scientiarum*."

Such a view of sociology was scarcely soothing or flattering to the political scientists, and it is not surprising that they prepared to resist this imminent absorption of their subject. Opposition was intensified by the fact that most political scientists were at this time generally under the spell of the political theories of Austinian jurisprudence and the Manchester school, and sociology was, though quite erroneously, popularly identified with state socialism. As sociology developed, however, it proved less of a cannibal than had been feared, and the more tolerant and synthetic of the political scientists came to see that, instead of absorbing their subject, sociology brought forward much useful data for political analysis and threw much light upon important but hitherto obscure problems in politics. Helpful coöperation is gradually replacing animosity and jealousy; the whole orientation of the newer political science has taken on a sociological cast, while sociology has derived much information of great value from the descriptive data and the refined analysis of political behavior which political science has produced.

There are a number of views regarding the nature of sociology which are supplementary rather than mutually exclusive. From one point of view it is a method of analysis of social phenomena. As Professor Hobhouse has expressed it:<sup>5</sup>

"General sociology is neither a separate science complete in itself before specialism begins, nor is it a mere synthesis of the social sciences consisting in a mechanical juxtaposition of their results. It is rather a vitalizing principle that runs through all social investigation, nourishing and nourished by it in turn, stimulating inquiry, correcting results, exhibiting the life of the

<sup>5</sup> Hobhouse, *The Sociological Review*, I (1908), p. 8. This also is the position of Durkheim.

whole in the parts, and returning from a study of the parts with a fuller comprehension of the whole."

The unique characteristic of this sociological method of approach to the study of social and political phenomena is that it assumes in all phases of analysis the group basis of all social activities and achievements. As Professor Small has very concisely expressed this cardinal differentiating feature of sociology:<sup>6</sup>

"The sociological technique is that variant among the social science techniques which proceeds from the perception that, after allowing for their purely physical relations, all human phenomena are functions not only of persons, but of persons whose personality on the one hand expresses itself in part through the formation of groups, and on the other hand is in part produced through the influence of groups. In brief, sociology is that technique which approaches knowledge of human experience as a whole through investigation of group-aspects of the phenomena."

The purpose and function of this sociological approach has been well stated by Professor Giddings. "Sociology is an attempt to account for the origin, growth, structure, and activities of society by the operation of physical, vital, and psychical causes, working together in a process of evolution."<sup>7</sup> Utilizing as its basic equipment the accepted results of the organic, physical and psychological sciences, sociology attempts to analyze the associative mechanism as a unified whole and aims at the attainment of an adequate and accurate knowledge of the social process in its most general and fundamental aspects. One of the most vital contentions of sociology is that this generalized knowledge of social evolution and processes furnishes the indispensable basis and the only scientific common point of orientation of the special social sciences.

The relation of sociology to political science is typical of its bearing upon all or any of the special social sciences. Sociology is primarily concerned with the evolution of the political com-

<sup>6</sup> Small, article "Sociology," in the new edition of the *Encyclopedia Americana*, Vol. 25, p. 208.

<sup>7</sup> Giddings, *Principles of Sociology*, p. 8.

munity, which political science assumes as existent, and with the development and functioning of all the organs of social control, of which the state is only the most prominent among many. It is also immediately interested in the modifications effected by the organs of social control, among them the state, in the structure of society. To an even greater extent it is concerned with the struggle of contending social interests and the adjustment which they seek and secure through the political institutions of society. Political science assumes the existence of political institutions and concentrates its attention upon an analysis of the state and the mechanism of government, and is only indirectly concerned with the broader problems of social origins, structure and processes or with the reaction of the state upon society. Sociology must derive from political science its knowledge of the details of political organization and activities, while political science can only avoid becoming metaphysical by accepting as its indispensable prolegomena the sociological generalizations with respect to the underlying social foundations of law and political institutions.<sup>8</sup> The development of the two subjects has been closely parallel in the last half century. They took shape in a period of classification, definition and description of the form and structure of institutions and have now passed into a stage of analysis of processes.<sup>9</sup>

## II. THE SOCIOLOGICAL VIEW OF THE NATURE OF THE STATE

Sociological interpretations of the nature of the state have, like the views on this subject held by economists, political scientists and jurists, been diverse and in some cases completely at variance. To a certain extent these differences of opinion have been correlated with the progress of society and social science. In earlier days the sociological theory of the state was associated with the individualistic view of classical economists, utilitarians

<sup>8</sup> Cf. *ibid.*, p. 37; *Political Science Quarterly*, December, 1909, pp. 571ff. Cf. also the various articles by Dean Roscoe Pound on sociological jurisprudence. See the complete bibliography of his writings in the *Centennial History of the Harvard Law School*.

<sup>9</sup> Cf. Small, *General Sociology*; Beard, *Economic Interpretation of the Constitution of the United States*, ch. I.

and analytical jurists, or with the more socialized conceptions which rested upon the biological analogy. Such writers as Herbert Spencer, Jacques Novicow, Gustave Le Bon and William Graham Sumner shared the interpretation of the state as the collective or communal policeman, with its functions limited to the protection of life and property from domestic assault or foreign invasion, and to the enforcement of contracts.<sup>10</sup> It was but a short step from the views of the more extreme members of this school, such as Novicow, to the avowedly anarchistic notions of Kropotkin with his renunciation of the state and all positive political institutions.<sup>11</sup>

The theory of the state which was founded upon the organic analogy, or the usual characterization of the state as the brain of the social organism, tended to confer upon the state much wider functions. Such writers as Lilienfeld, Schäffle and Worms viewed the state as the chief coördinating and directing organ of society and maintained that the more highly developed the civilization of a society the greater the desirable scope of state interference.<sup>12</sup> To be sure, there were some members of the biological school who either denied the identity of the state and the brain of the social organism or refused to concede that this analogy in any way justified extending the powers of the state or magnifying its position in society.<sup>13</sup>

A transition from the organic to the psychological school is made from two quite different points of approach by De Greef and Fouillée on the one hand, and by Gierke and Maitland on the other. De Greef and Fouillée look upon society as a "contractual organism" and view the state and political institutions as the highest manifestation of association—that in which the

<sup>10</sup> Cf. Spencer, *Social Statics*, and *Man Versus the State*; Novicow, *Les Luittes entre sociétés humaines*; Le Bon, *La Psychologie politique*; Sumner, *What Social Classes Owe to each Other*.

<sup>11</sup> Kropotkin, *Mutual Aid as a Factor in Evolution*; *Anarchism, Its Philosophy and Ideal*.

<sup>12</sup> See their works and doctrines summarized in Coker's *Organismic Theories of the State*, pp. 115ff.

<sup>13</sup> Novicow maintained that the intellectual aristocracy was the real brain of the social organism, and Spencer opposed state activity.

voluntary element is the greatest.<sup>14</sup> Gierke and Maitland, in direct line of theoretical descent from Althusius, hold the state to be the product of a number of corporate groups, performing the function of adjusting the relations of groups to each other and to the state. Each of these constituent groups as a corporation is not a mere fictitious legal or juristic person, but a real person—a real and vital “psychic personality.”<sup>15</sup> From these points of view it is easy to pass to the purely psychological view of the state, according to which political obedience is held to grow out of psychological forces, and political processes are represented as chiefly psychological.<sup>16</sup>

An enormous advance in the sociological conception of the state appeared in the works of the Austrian sociologist, Gustav Ratzenhofer, which have been affectionately commended and interpreted to American readers by Professor Small. Instead of resting content with dogmatic statements about political policy or an elaborate description of social structure, Ratzenhofer, following the lead of Gumplowicz, attempted to penetrate beneath the surface of things and catch a glimpse of the real nature of social and political processes. In this way he came to view society as a complex of contesting interest groups seeking a realization of their aims and reaching an adjustment with the contrary aspirations of other groups. He regarded it as the function of the state to apply the necessary restraints and to impose the essential limitations upon the conflict of interests, so that it would result in progress and social justice rather than in exploitation and anarchy.<sup>17</sup> According to this view, then, the state appears as the “umpire” of the social process.

This conception of political processes has been elaborated in America by Mr. Bentley in his all too neglected work on the

<sup>14</sup> De Greef, *Introduction à la sociologie*; Fouillée, *La Science sociale contemporaine*.

<sup>15</sup> Gierke, *Das deutsche Genossenschaftsrecht*; *Die Genossenschaftstheorie*; Maitland, *Gierke's Political Theories of the Middle Ages*, introduction; *Collected Papers*, III, pp. 210ff.

<sup>16</sup> For names, titles and contributions of the psychological sociologists, see section X below.

<sup>17</sup> Ratzenhofer, *Wesen und Zweck der Politik*; Small, *General Sociology*, pp. 226ff.

*Process of Government*.<sup>18</sup> Gumplowicz, Loria and Oppenheimer have also agreed with this conception of the nature of political processes, but have held that the adjustment of the conflicting interests always emerges in one specific manner, namely, the domination of the economically inferior majority by the economically powerful minority. According to this school of thinkers, who are by no means orthodox socialists, the economic exploitation of the majority through the possession of political sovereignty by the minority has been the essence of the political process and the real function of the state since primitive times. The state, in other words, is legalized oppression.<sup>19</sup>

Another method of characterizing the sociological view of the nature of the state would be to point out the two prevailing interpretations of the relation of the state to social prosperity and progress. One group, best represented by such writers as Ward, Giddings, Hobhouse and Ludwig Stein look upon the state as the supreme social institution, the indispensable prerequisite for all stability and progress, and the chief instrument for improving the condition of the human race. Professor Giddings lauds the state as "the mightiest creation of the human mind, the noblest expression of human purpose."<sup>20</sup> Ward, in his classic statement phrases his eulogy of the state in the following manner:<sup>21</sup>

"We thus see that the state, though genetic in its origin, is telic in its method; that it has but one purpose, function, or mission, that of securing the welfare of society; that its mode of operation is that of preventing the anti-social action of individuals; that in doing this it increases the freedom of human action so long as it is not anti-social; that the state is therefore essentially moral or ethical; that its own acts must necessarily be ethical:

<sup>18</sup> Though this work is regarded by many penetrating critics as the most notable American contribution to political theory, it is not analyzed in Professor Merriam's excellent survey of recent American political doctrines.

<sup>19</sup> Gumplowicz, *Der Rassenkampf*; *Grundriss der Sociologie*; Oppenheimer, *The State*; Loria, *The Economic Foundations of Society*. Cf. Giddings, "A Theory of History," *Political Science Quarterly*, December, 1920, p. 507.

<sup>20</sup> Giddings, *The Responsible State*, pp. 48ff. Cf. *Inductive Sociology*, pp. 210ff.

<sup>21</sup> Ward, *Pure Sociology*, p. 555.





that being a natural product it must in a large sense be representative; that in point of fact it is always as good as society will permit it to be; that while thus far in the history of society the state has rarely performed acts that tend to advance mankind it has always been the condition to all achievement, making possible all the social, industrial, artistic, literary, and scientific activities that go on within the state and under its protection. There is no other institution with which the state may be compared, and yet, in view of all this, it is the most important of all human institutions."

Ludwig Stein finds that the principle of authority is as important for the maintenance of the race as the principle of self-preservation is for individual survival. Those who wield authority in society are the agency for the education and discipline of the social will. Civilization has never developed save as a result of the establishment of authoritative control in society.<sup>22</sup> Professor Hobhouse shares the point of view of Giddings, Ward and Stein, though perhaps with more reserve, qualification and discrimination.<sup>23</sup>

At variance with this type of interpretation, though perhaps more eager and enthusiastic in their search for some method of social improvement, are Durkheim and the administrative syndicalists, and Cole and the gild-socialists. After deploring the development of moral and social anarchy in modern society and seeking some agency for remedying the situation, Durkheim holds that the state must be supplemented by specialized and semi-autonomous administrative agencies if it is to accomplish much for social improvement. The state can legislate with intelligence only on general policies; its massive and slow moving machinery is becoming progressively less fitted to deal with the highly specialized and complex industrial activities and social relations of the present day. The state should give unity to social action by laying down general principles of policy and

<sup>22</sup> Stein, *La Question sociale*, pp. 122, 225ff, 269ff, 351; *Philosophische Strömungen der Gegenwart*, ch. xv.

<sup>23</sup> Hobhouse, *Democracy and Reaction*, p. 207; *Social Evolution and Political Theory*, pp. 186ff; *The Metaphysical Theory of the State*.

should secure competent administration of law by handing this over to the occupational or professional groups that possess the requisite specialized knowledge and immediate interest.<sup>24</sup>

Cole and the gild-socialists share Durkheim's view with respect to the growing incompetence of the national state in modern industrial civilization, but would go even further in limiting its action. Conceding to the state the essentially "political" function of protecting life and property and enforcing contracts, and large legislative powers in economic matters which concern society as consumers, they deny that the state is the supreme coördinating agency in society and would restrict the state in regard to productive operations not only in the matter of administration, but also of legislation. Both legislation and administration in productive enterprise in society they would confer upon exalted and improved trade-unions.<sup>25</sup> The extreme supporters of *laissez-faire* among sociologists were mentioned at the opening of this section.

While there are thus real and significant differences of opinion among leading sociologists as to the nature and importance of the state, there is almost unanimous agreement among them on one fundamental problem, namely, the relation between society and the state. Sociologists are agreed that society is the more general and basic fact and term, which refers to and embraces in an inclusive manner all forms of associated life, whether that life be among animals or men. The state is a specific agency, perhaps the most important, among several fundamental types of organs or agencies utilized by society to insure that collective modes of life shall be more safe, efficient and progressive. Though its roots extend far back into the early history of mankind, the state, of modern political terminology, is a very late and recent product of social evolution, and is thus by its very origin and genesis, as well as by analysis of its present status and func-

<sup>24</sup> Durkheim, *De la Division du travail social* (2nd ed., 1902), preface; *Le Suicide* pp. 434ff.

<sup>25</sup> Cole, *Self-Government in Industry, Social Theory, Guild-Socialism*. Cf. *Political Science Quarterly*, December, 1920, pp. 665-69. On the subject of pluralistic theories see Coker, *American Political Science Review*, May, 1921, pp. 188-213.

tions, demonstrated to be a product, creation and creature of society. This is the basic point of departure for the sociological study of political problems and constitutes perhaps the most permanent and distinctive contribution of sociology to the theory of the state.

### III. THE ORIGINS OF POLITICAL INSTITUTIONS

The importance of the sociological contributions to the investigation of the origins of political institutions grows out of the fact now generally conceded by all social scientists, that while society is far older than the human race, the state is a recent product of human progress. In fact, in the light of the newer historical chronology, it is but a contemporary development. Its origins, then, must be looked for within the general complex of social evolution and its genesis interpreted in the light of those basic socio-psychological forces and influences which made its appearance desirable and possible.

Following out this line of doctrine the earlier historical sociologists, and the comparative school of anthropologists, such as Spencer, Tylor, McLennan, Post, Letourneau, Kovalevsky and Morgan, worked out an elaborate scheme of the orderly, sequential and unilateral evolution of institutions. The stages of social and political development were sketched with assurance and were correlated with certain definite advances in material culture. Social organization was represented as having everywhere moved forward in a uniform manner through the stages of the unorganized endogamous horde, the exogamous maternal clan, the exogamous paternal gens, tribal feudalism and the territorial state. Democracy was believed to be correlated with inferior culture, while monarchy invariably appeared with the proximate approach to the territorial state. The most famous synthesis of this point of view was embodied in Lewis Henry Morgan's *Ancient Society*, for more than a generation the most revered and quoted among the sacred books of the historical sociologists.

While this type of historical sociology is now regarded as possessing little or no scientific value, its real significance may,

perhaps, be passed over too lightly. While founded on a hopelessly faulty methodology and nearly invariably in error in their hypothetical synthesis of social development, this group of writers must be accorded the credit of having sketched out the problem to be solved, and of having indicated the correct avenue of approach to a study of the genesis of the state. More scientific methodology of research, and a wider range of more reliable data, have enabled a later generation to traverse the same ground with more assured results, but these pioneers created the background against which constructive criticism could later build the permanent structure of social and political genesis.

The destruction of the imposing but treacherous edifice of Morganian genetic sociology and the establishment of the science of social genesis on a firm and reliable foundation has been chiefly the work of a group of American anthropologists led by Professor Franz Boas. Following a truly inductive method, they reserved generalization until after a thorough study of concrete data had been made through personal observation. For about twenty-five years they have been working in intensive studies of local cultural areas, and now the synthesis of their results has begun to appear in such works as Boas' *Mind of Primitive Man*, Lowie's *Primitive Society*, and *Culture and Ethnology*, Wissler's *American Indian* and Goldenwaiser's *Totemism*, and his recent *Early Civilization*. These writers have proved that there is no general tendency towards uniform unilateral evolution of social institutions, no succession of maternal and paternal relationship in sequential forms of social organization, no correlation of maternal organization with inferior culture or of paternal relationship with higher material civilization, or of primitive democracy with backward material culture and tribal monarchy and autocracy with more advanced civilization. Peoples appear to have developed to the threshold of the territorial or civil state through local groups with no clan or gens organization and through both maternal clans and paternal gentes. No authentic instance can be found in the whole literature of critical anthropology of the independent passage of any group through all of these stages. As Professor Lowie summar-

izes the conclusions of these critical scholars in his truly great work, which is as much the authoritative synthesis of the newer position as Morgan's was of the old.<sup>26</sup>

"There is no fixed succession of maternal and paternal descent; sibless tribes may pass directly into the matrilineal or patrilineal condition; if the highest civilizations emphasize the paternal side of the family, so do many of the lowest; and the social history of a particular people cannot be reconstructed from any generally valid scheme of evolution but only in the light of its known and probable cultural relations with neighboring peoples."

Of Morgan's view that primitive social and cultural institutions are associated with democratic political institutions, Lowie caustically remarks that "it may be said categorically that even at his worst Morgan never perpetrated more palpable nonsense, and that is saying a good deal." Monarchical and aristocratic political institutions frequently occur in connection with a very primitive material culture and a kinship basis of organization.<sup>27</sup> Finally, Lowie shows on the basis of Schurtz's *Altersklassen und Männerbünde* that there was no sharp and final break between kinship society and the political or territorial state, nor any probability that this transition took place only in a few instances and by deliberate legal enactment, as in the case of the classic example of the legislation of Cleisthenes. The origin of the territorial state was prepared for centuries before its formal and final appearance by many and diverse types of primitive associations and special forms of group organization which united the population of a territorial aggregate into a unity for certain forms of action, many of them of a political nature, irrespective of the diversity of kinship relations.<sup>28</sup> The origin of the political state, then, seems rather to have been the product of a gradual development than a semi-cataclysmic transformation.

Though there was no catastrophic transition from tribal to political society, it required something more than normal peace-

<sup>26</sup> Lowie, *Primitive Society*, p. 185.

<sup>27</sup> *Ibid.*, pp. 389-90.

<sup>28</sup> *Ibid.*, pp. 390-96.

ful conditions to produce modern political society founded on rather extensive territorial units. What has now come to be regarded as the distinctive sociological theory of the origin of the state is the doctrine that the territorial state of historic times was a product of war and the forcible amalgamation of lesser groups into one larger aggregate. Hume and Adam Ferguson<sup>29</sup> had postulated this theory in the eighteenth century and it was revived by Herbert Spencer and Walter Bagehot. The writer who has by the thoroughness of his treatment made this subject primarily his own, is an Austrian Pole, the jurist and sociologist Ludwig Gumplowicz. In his *Rassenkampf* and his *Grundriss*, Gumplowicz has sketched in detail the various stages of this process of conquest, superimposition, assimilation and amalgamation which has characterized the development of the state from the clash of primitive tribal feudal groups to the perfection of the ethnic or national state. His view of political origins has been accepted by most sociologists who have concerned themselves with this subject, most notably Ratzenhofer in Austria, Oppenheimer in Germany, Edward Jenks in England and Lester F. Ward and Albion W. Small in this country.

This conception has been bitterly attacked by Jacques Novicow, who, in his *La Critique du Darwinism social*, calls attention to the many peaceful phases of political origins and activities and insists that the state arose chiefly to regulate commerce and protect property. Kropotkin in his *Mutual Aid as a Factor in Evolution* has also assailed this notion and pointed out the significance of coöperation in social and political origins. Eclectic writers, particularly Professor Giddings and Professor E. C. Hayes have attempted a synthesis of these opposing points of view.<sup>30</sup> They agree, however, with the majority of sociologists that in the period of political origins war was the most powerful factor in the creation of the state. It is significant that all of

<sup>29</sup> Hume, *Essays Moral, Political and Literary*, I, pp. 113-14; II, pp. 197ff., 204; Ferguson, *A History of Civil Society*.

<sup>30</sup> Giddings, *Principles of Sociology*, p. 316; Hayes, *An Introduction to the Study of Sociology*, pp. 538ff.

these various groups of writers agree that in peace or war economic factors lie at the foundation of political origins and genesis.<sup>31</sup>

In addition to indicating the nature of political origins sociologists have outlined in an illuminating manner the stages of political development in their relation to the general progress of civilization. Spencer's scheme divided political and social progress into three stages, the military, the industrial and the ethical, the last of which had not been attained anywhere and the second but partially.<sup>32</sup> Bagehot postulated an age of the development of custom, an age of the conflict of customs and the building up of nations, and a final age of political progress through discussion.<sup>33</sup> Giddings divides the stages of social progress into the zoögenic, the anthropogenic, the ethnogenic and the demogenic, the first of which corresponds to the prehuman stage and the last to the period of civil society. This last period he further divides into the military-religious, the liberal-legal, and the economic ethical stages.<sup>34</sup> There is little doubt that Giddings' classification of the stages of social and political progress is the most satisfactory achievement in this field, though we may expect in the revised edition of his *Principles of Sociology* a rewriting of much of the detailed treatment of social evolution in the light of the newer views of primitive social organization which have been worked out by Boas and his colleagues and brought together by Lowie. Other well-known classifications of political evolution are Oppenheimer's postulate of progress through the stages of the primitive feudal state, the maritime state, the developed feudal state and the constitutional state,<sup>35</sup> and Hobhouse's notion that political authority has in turn rested upon the principles of kinship, authority and citizenship.<sup>36</sup> In all of these classifications

<sup>31</sup> The most notable contribution to this point of view is Oppenheimer's *The State*; the most extreme view is to be found in Loria's *Economic Foundations of Society*.

<sup>32</sup> Spencer, *Principles of Sociology*, II, pp. 599ff.

<sup>33</sup> Bagehot, *Physics and Politics*.

<sup>34</sup> Giddings, *Principles of Sociology*, bk. III.

<sup>35</sup> Oppenheimer, *The State*.

<sup>36</sup> Hobhouse, *Morals in Evolution* (ed. 1915), pp. 42ff.

the significant fact is that the political progress has been correlated with and dependent upon, general social development.

The contributions of psychological sociologists to the analysis of the psychic foundations of the state and political obedience will be dealt with later and in another connection, but it may be here remarked that their work has, if anything, been more significant and original than the sociological contributions to the historical genesis of the state.<sup>37</sup>

#### IV. THE BASIC FACTORS IN THE STATE

While political scientists have long been virtually agreed that a state must embrace as essential elements population, territory, property, and sovereign power, they have done little more than assume these as metaphysical entities and, with the exception of elaborate metaphysical discussions of sovereignty, they have not proceeded to a concrete description and analysis of these fundamental factors in the state in such a way as would indicate their direct bearing upon political action or furnish any real guidance to the statesman. Here again sociology has made a modest attempt to penetrate beyond formal definition and logical assumption and relate these political elements to substantial reality.

That branch of sociology generally designated as demography has for the first time thoroughly described and classified the social population according to numbers, sex, age, property, occupation, religion, nationality, mobility and the factors involved in vital statistics. Instead of a vague and undifferentiated entity the social population has become something which is definite, classified and adapted to intelligent utilization by political scientist or governmental official. This line of work has been associated with such names as Newsholme, Bowley, Dumont, Levasseur, Hansen, Nitti, Willcox, Mayo-Smith, Wright, Durand and Bailey.<sup>38</sup> A more thorough investigation and a more scien-

<sup>37</sup> See section X below.

<sup>38</sup> Perhaps the first comprehensive achievement of this sort which appeared in English was Professor Richmond Mayo-Smith's two books, *Statistics and Sociology* and *Statistics and Economics*.



tific analysis of the problems of race have also led to notable contributions to a more accurate understanding of population problems. The careful descriptive studies and classifications of races on the foundation of valid physical criteria by Ripley, Sergi, Deniker and others have revealed the hopeless mixture of races in ancient and modern times and demonstrated the essential illiteracy and scientific bankruptcy which is self-confessed on the part of any writer who would attempt a racial explanation of the political development of any European state, ancient or modern. These writers, together with Professor Boas, have shown how extremely tenuous is all evidence for the doctrine of racial superiority, and have put to rest for all time the Aryan myth and all allied vestiges of racial arrogance which have perverted history and politics from the days of Aristotle and St. Peter to Count Joseph Arthur of Gobineau and Houston Stuart Chamberlain.<sup>39</sup>

Differential biology has been utilized for sociological purposes by such writers as Galton, Pearson, Bateson, Ammon, Schallmayer, Jacoby, Vacher de Lapouge, Conklin, Tenney, Davenport and Keller with the aim of discovering whether or not modern political tendencies are justified by the findings of biological science. While they can scarcely be said to have arrived at any consensus of opinion, they have at least proved that the questions of democracy and aristocracy, of social strata generally, of remedial social legislation and of immigration policies all involve biological problems of the first magnitude and cannot be finally settled without an appeal to biological criteria. It might be said in passing that Ammon and Lapouge incline to a justification of aristocracy, Jacoby, Tenney and Conklin, with reservations, to a vindication of democracy, and Bateson to a defense of modified socialism. It is significant that nearly all agree that there is no biological support for a pure or egalitarian democracy and that democracy can scarcely hope to survive unless it improves in the utilization of superior capacity and in its ability to check the increase of the defective biological types

<sup>39</sup> See especially Ripley, *Races of Europe*, chs. VI, XVII; Boas, *Mind of Primitive Man*, ch. i. For hold-overs of the old doctrine, see Demolins, *Anglo-Saxon Superiority*; McDougall, *The Group Mind*; Wells, *Outline of History*.

that are no longer as ruthlessly eliminated as formerly by the processes of nature.<sup>40</sup>

Differential psychology has revealed equally significant variations in mental capacity and has challenged in many ways the complacency of the unqualified exponents of democracy. Professor Giddings has made a provisional use of this data in his psychological classification of the population of the United States. The extensive data which has been brought forward by the recent intelligence tests administered by the United States army and now being introduced into civilian endeavor will do much to aid in this all-important problem of arriving at a scientific estimate of variations in mental capacity in the population with all the implications which this carries for political questions.<sup>41</sup> Finally, Professor Giddings has shown how the social population develops into a society requiring political direction and control, and has suggested a differentiation of the population into classes which are expressive of their relation to political authority. He finds that there are subjects of authority or all those who dwell within the limits of the state; makers of moral authority, or those who in any way help to shape public opinion; makers of legal authority, or those who exercise the right of suffrage; and agents of authority, or the political government.<sup>42</sup> These, then, are a few of the ways in which sociology has aided in giving definiteness and significance to the conception of the social population which political scientists have metaphysically assumed as a prerequisite of the state.

Sociologists working from the geographical standpoint have also given to the concept of territory some meaning and significance other than so many thousand square miles indicated on

<sup>40</sup> A significant contribution to this subject which reviews much of the important literature is Tenney's *Social Democracy and Population*. See also Todd, *Theories of Social Progress*, chs. XVI-XX.

<sup>41</sup> Giddings, "A Provisional Distribution of the Population of the United States into Psychological Classes" in the *Psychological Review*, July, 1901. Cf. Sumner, *Folkways*, pp. 40ff; Lichtenberger, "The Social Significance of Mental Levels," in *Publications of the American Sociological Society*, Vol. 15; McDougall, *Is America Safe for Democracy?*

<sup>42</sup> Giddings, *Principles of Sociology*, bk. II, ch. i; *Elements of Sociology*, pp. 201-202.

a map by means of some distinctive chromatic characterization. That aspiration to understand the relation between political structure and processes and geographical conditions which Montesquieu expressed and which has characterized writers from Hippocrates and Aristotle to Ratzel and Huntington has now been in good part realized. The accumulation of geographical data as a result of the discoveries from the time of Marco Polo, Columbus and Chardin to Alexander Von Humboldt enabled Karl Ritter during the first half of the last century to systematize the subject of physical and human geography.<sup>43</sup> With the aid of the Darwinian doctrine Friedrich Ratzel was able to go further and more firmly establish the science of anthropogeography, within which he found ample space for a detailed discussion of the relation between geography and the state.<sup>44</sup> In France, Elisée Reclus rivalled Ratzel as a systematizer,<sup>45</sup> and in America Ratzel's pupil, Miss Ellen Semple, has given a faithful English rendition of her master's doctrine.<sup>46</sup> As Ratzel has well insisted, it is not a problem of man versus nature, but of man, society and nature evolving together through reciprocal influences.

In addition to these systematic treatises other writers have made important contributions to special phases of the general subject. Cowan and Mackinder have indicated the importance of a protective topography and the possession of strategic areas and positions. Léon Metchnikoff has sketched the significance of river basin environments for political origins and development. Le Play and Geddes have demonstrated the relation of natural geographic regions to political segregation and unity. Demolins has brought together a striking review of the bearing of routes of travel and communication on the foundation and disruption of states. Huntington has surveyed the operation of the climatic factor in both its static and dynamic aspects, and has developed

<sup>43</sup> See especially the introduction to his *Erkunde*. His significant doctrines have been translated by W. L. Gage as *Ritter's Geographical Essays*.

<sup>44</sup> His important contributions to this specific subject are *Der Staat und sein Boden*, and *Politische Geographie*.

<sup>45</sup> See his *Nouvelle géographie universelle; La Terre et l'Homme*.

<sup>46</sup> Semple, *American History in Its Geographic Conditions; Influences of Geographic Environment*.

an original thesis as to the relation between climatic conditions and the prosperity and decadence of political aggregates. Dexter has investigated the relation between conduct and the weather, and has indicated that a study of the barometer will allow police captains to determine when they will need their reservists. Brunhes has called attention to the fact that the concept of physical environment must be expanded to include additions and variations introduced by man, a modern city block being as much a part of the environment as an adjoining mountain peak.<sup>47</sup> Professor Giddings in his *Theory of Social Causation* has endeavored to relate the physical environment to the psychic factors in society and the state.

Though the part of property and economic factors in political processes has been recognized by the most significant writers on the subject of politics from Aristotle through Machiavelli, Hobbes, Harrington, Locke, and the "Fathers," such as Adams, Madison and Calhoun, to the Ricardian socialists, the vital importance of this material factor in politics was well nigh lost sight of in the last generation of metaphysical and juristic political science, and a leading American student of historical politics almost received professional ostracism for calling attention to the fact that the framers of the constitution admitted that economic factors had played a large part in the drafting of that document and in the reception accorded it.<sup>48</sup> Sociological writers have rendered notable service in helping to revive this point of approach which alone can give rationale to any interpretation of political activities. Commons and Loria have indicated the relation of property to the genesis and structure of government and the location of sovereign power; while Veblen has made the most notable contribution to the explanation of the manner in which economic factors react upon the other social institutions, such as politics, religion, law, education, custom and fashion.<sup>49</sup>

<sup>47</sup> A comprehensive but ill-organized survey of this literature is contained in Koller's *The Theory of Environment*. A systematic treatment by Professor J. F. Thomas is under way.

<sup>48</sup> Beard, *An Economic Interpretation of the Constitution*.

<sup>49</sup> Commons, "A Sociological View of Sovereignty," in *American Journal of Sociology*, Vols. 5-6. Loria, *The Economic Foundations of Society*. Veblen, *The Theory of the Leisure Class*; *The Vested Interests*.

Gumplowicz and Oppenheimer have insisted that economic exploitation has furnished the motive power in political processes since the dawn of history.<sup>50</sup> Ratzenhofer, Small and Bentley have shown how the forwarding of the legal and pacific adjustment of contending interests is the one uniform, permanent and unique function of the state.<sup>51</sup>

Sociologists have undertaken to indicate the social origins and limitations of political sovereignty. While Spencer and Novicow have rejected the concept outright, most sociologists have inclined to the view that it is a valid political concept, but must be studied in its proper social setting. Professor Giddings, while admitting that sovereignty is "the dominant human power, individual or pluralistic, in a politically organized and politically independent population," denies that it is original, absolute, unlimited or universal power. It is strictly limited by social circumstances, and its modes of expression have been closely correlated with the stages of social evolution.<sup>52</sup> Commons and Loria have made clear the vital relation between the economic supremacy of a social class and the possession of sovereign power, and have indicated the correlation of alterations in property and economic power with shifts in the location of sovereignty. Not only have sociological writers questioned the doctrine of absolute sovereignty, they have also expressed a doubt of its unity.<sup>53</sup> The pluralists and gild-socialists contend that sovereignty is not only limited and relative, but is also distributed.<sup>54</sup>

Finally, Professor Ross has contended that political institutions and influences constitute but a part of the agencies which secure social control and enforce obedience to group rules, and has attempted to formulate the laws which govern the relative degree

<sup>50</sup> Gumplowicz, *Outlines of Sociology*; Oppenheimer, *The State*.

<sup>51</sup> Ratzenhofer, *Wesen und Zweck der Politik*; Small, *General Sociology*, pp. 193ff, 242; Bentley, *The Process of Government*.

<sup>52</sup> Giddings, "Sovereignty and Government," *Political Science Quarterly*, Vol. 21; *The Responsible State*, pp. 36-48.

<sup>53</sup> Cf. Coker, loc. cit.

<sup>54</sup> Cf. Laski, *Studies in the Problem of Sovereignty*, ch. i; Figgis, *Churches in the Modern State*; Duguit, *Law in the Modern State*; *Political Science Quarterly*, Vol. 24, pp. 284-95.

of operation of political and non-political agencies in the way of maintaining order in a community.<sup>55</sup> This interesting line of development has been cultivated by a long list of social psychologists who have demonstrated beyond question the fact that without the proper socio-psychological background and support, political sovereignty could not have even the most nebulous existence or any power whatever to compel obedience.<sup>56</sup>

#### V. THE FORMS OF THE STATE AND OF GOVERNMENT

While sociologists have accepted the validity of the technical distinction between the state and the government, they have regarded political activity as a unified whole and have not dwelt to any extent upon the sociological implications of this distinction. Their classifications of the forms of the state and of the government have, then, been based upon a consideration of the general type of political control in any society. The sociological writings on this subject may be divided into two types of approach, the sociological interpretation of conventional forms of classification and distinctly original sociological classifications.

Though a few writers, such as Le Bon, W.H. Mallock, Le Play, Ammon and Vacher de Lapouge incline to favor aristocracy as against democracy, most sociologists have come to accept the existence of democracy as assured for the present at least and have therefore devoted their comment to the consideration of the problems of democracy. The common point of departure for sociological discussions of democracy has been the conviction that the typical statement of the political scientists that democracy is the form of the state in which the power is in the hands of the majority or where universal suffrage prevails is but a very imperfect and incomplete characterization of this form of political organization.

A. F. Bentley has shown that the essence of all governments is the struggle of interest groups with each other, and holds

<sup>55</sup> Ross, *Social Control*.

<sup>56</sup> Trotter, *Instincts of the Herd*; Wallas, *The Great Society*; Tarde, *Les Transformations du pouvoir*. The psychological factors in the state are classified in section X below.

that a despotism is a form of government in which group interests and antagonisms are settled by the action of an individual, an aristocracy where they are handled by the powerful few, and a democracy exists only where every interest and group can express itself and secure representation for itself in a fair and equitable manner.<sup>57</sup>

Lester F. Ward in a socio-historical analysis of the varieties of democracy finds three successive types: physiocracy, or the dominance of *laissez-faire* concepts; plutocracy, or the present exploitation of philosophical individualism in the interest of the corrupt vested interests; and the sociocracy of the future, when government will be utilized for the interest of the whole community and will be founded on the laws of social science.<sup>58</sup> Professor Giddings has held that a true democracy must embrace not only popular sovereignty and universal suffrage but a social system in which equality of legal right and of economic and social opportunity prevails.<sup>59</sup> This view that any democracy worth while must provide for a democratic social and economic régime is shared by most other sociologists; and Small, Cooley, Loria, Commons and Hobhouse have made important contributions in the way of elaborating this notion. Cooley has dwelt at length upon the problems of modern democracy, which, he believes, center around the difficulties encountered in putting into operation on a large scale the fundamental notions, ideals and practices of democracy which were originally developed in the small face-to-face primary groups, such as the family, neighborhood and community.<sup>60</sup> Other stimulating writers, chiefly Professor Maciver, Miss Follett and Professor Geddes, believe that democracy can be saved only by a reversal of present centralizing tendencies and a revival of the importance of community interests and unity in both social and political affairs.<sup>61</sup> Several sociologists, most notably Sumner and Hobhouse, have con-

<sup>57</sup> Bentley, *The Process of Government*, pp. 305ff.

<sup>58</sup> Ward, *The Psychic Factors of Civilization*, pp. 311ff.

<sup>59</sup> Giddings, *Elements of Sociology*, ch. xxiv.

<sup>60</sup> Cooley, *Social Organization*, especially pts. I-III.

<sup>61</sup> Maciver, *Community, a Sociological Study*; Follett, *The New State*; Geddes, *Cities in Evolution*.

sidered the relation of democracy to international affairs and have contended that democracy and imperialism are mutually exclusive and destructive, a position which Professor Giddings has vigorously attacked.<sup>62</sup>

The sociological innovations in the way of a reclassification of political systems have not been epoch-making or revolutionary, but they have pointed the way to the only significant type of classification, namely, that which will be expressive of the general social system and its relation to political affairs. Comte believed that there are but two really fundamental types of government, a theocracy, or the government by priests, and a sociocracy, or the control of political policy by sociologists.<sup>63</sup> Spencer believed that political institutions were shaped by the general purpose of social organization, which has been for war or industrial expansion. Therefore, the two great successive types of states have been the military and the industrial. He hazarded the hope that an ethical type of social and political organization might ultimately appear.<sup>64</sup> Bagehot believed that there were two vital forms of political organization, one based on rigidity of custom and authoritative dominion and the other founded on free discussion and representative institutions.<sup>65</sup> Ratzenhofer and Small have argued that there have been two chief types of states, the early authoritarian conquest-state and its gradual development into a more democratic and progressive culture-state.<sup>66</sup> Tarde, looking at the question from a psychological point of view, has maintained that the two possible forms of political institutions are a teleocracy, or the sovereignty of desires, and an ideocracy, or the dominion of ideas.<sup>67</sup> Ross has held with vigor the doctrine that the location of the dominant social power is the only real criterion of political authority and has classified the various régimes which are indicative of the dominating forces in society.<sup>68</sup> In his

<sup>62</sup> Cf. Hobhouse, *Democracy and Reaction*; Giddings, *Democracy and Empire*.

<sup>63</sup> Comte, *Principles of a Positive Polity*, III, p. 326.

<sup>64</sup> Spencer, *The Principles of Sociology*, II, pp. 568ff.

<sup>65</sup> Bagehot, *Physics and Politics*.

<sup>66</sup> Small, *General Sociology*, pp. 193ff.

<sup>67</sup> Tarde, *Les Transformations du pouvoir*, pp. 212-13.

<sup>68</sup> Ross, *Social Control*, p. 79.



*Historical and Descriptive Sociology* Professor Giddings has made an even more ambitious effort to classify the different types of societies in a manner which will express both their general psychic characteristics and the form of social bond and public policy which prevails in each. He differentiates some eight such types—sympathetic, congenial, approbational, despotic, authoritative, conspiratorial, contractual and idealistic.

#### VI. THE PROCESSES AND MECHANISM OF GOVERNMENT

While sociological writers have devoted considerable attention to the problems of the processes and mechanism of government, as, for example, Tarde's attack on Montesquieu's theory of the division of powers and Ward's argument for executive leadership in the legislature, the really significant contributions that they have made to this phase of politics lie in three main departments; the essence of the governmental process, the nature and tendencies of political parties, and the necessity of finding some way for decentralizing the top-heavy and over-grown national state of the present day.

In dealing with the important problem of the real essence of government the sociologists have in most cases abandoned as an adequate description the pious abstraction that government "exists for the good of the governed" or for the advancement of the Christian virtues in the community, and have sought to discover the real nature of the "process of government." In doing so they have gone back to the position first established by Aristotle, elaborated by Althusius, and revived in more recent times by John Adams, Madison and Calhoun in this country, and by Hall and the Ricardian socialists in Great Britain: namely, that society is a complex of groups each of which is given coherence and energy through the possession of a common interest or set of interests.<sup>69</sup> The state exists to furnish the necessary restraint for this conflict of interests and to insure that it will be a bene-

<sup>69</sup> For the most elaborate formal treatment of the type, structure and persistence of social groups, which Professors Small and Ellwood have well called "social geometry," see Simmel, *Soziologie, Untersuchungen über die Formen der Vergesellschaftung*.

ficial rather than a destructive process. Government is the agency or avenue through which these groups carry on the public phases of their conflict and realize their objects, or effect a temporarily satisfactory adjustment of their aims with the opposing aspirations of other groups. Log-rolling, accordingly, instead of representing a degenerate and depraved mode of political activity becomes the typical and essential political process and legislative procedure. This conception of the essence of the governmental function and process in its sociological form was first thoroughly worked out by Ludwig Gumplowicz. It was taken up in Europe by Ratzenhofer, Oppenheimer, Loria and a number of brilliant French and Belgian sociologists and jurists, and was brought into this country by Professor Small. In a modified form it was accepted by Gierke in Germany, by Durkheim in France, and Maitland and Figgis in England. But the most thorough and comprehensive exposition of this cardinal contribution of sociology to politics has been the work of Mr. A. F. Bentley in his treatise on *The Process of Government*.

This view of the nature of government has led immediately to the consideration of the problem of representative government and the desirable type of representative units. As might be expected, there are few sociologists among those who have given any special attention to the subject who can find courage to defend the present illogical, anachronistic and artificial method of representation through territorial units, which is based upon the preposterous political and psychological fallacy that there is a general community or district sentiment apart from the interests of the various classes and groups which can be isolated and represented in government. Sociologists have demonstrated the fact that even under territorial representation the basic interest groups seek, and in various indirect and subterranean ways obtain, that representation which is denied to them in a direct and open form. Indeed, most sociologists, in common with progressive political scientists, agree that if the adjustment of group interests is the essence of government, representative institutions must have their form and mechanisms brought into harmony with the real purpose and function of government. It scarcely

needs to be mentioned that the psychological sociologists have long since laid at rest the Rousseauian dogma of the "general will" and the fractional distribution of sovereign power among the citizens of a state, upon which territorial representation was based and by which it was justified.<sup>70</sup> About the only sociologist of constructive or liberal tendencies recently to defend territorial representation against vocationalism is Mr. Graham Wallas. In his *Our Social Heritage* he maintains that vocationalism would produce group selfishness, conservatism, the rule of mediocrity, inefficiency in the accumulation of socially necessary capital, and the loss of national patriotism and coöperative activity. But even he admits that the solution of the problem of representative government will lie in a compromise between vocationalism and territorial representation.

These views concerning the essence of governmental activity and the real basis of representative government are intimately related to what may be regarded as the sociological doctrine of political parties. Sociologists who have devoted much time to this problem are practically united in the belief that a political party is in reality an interest group or a coalition of interest groups which have more common than divergent objects, and find it advantageous to present a unified front against other combinations of opposed interest groups. The party organization itself tends to become an interest group which seeks the prestige and financial rewards which flow from party loyalty and success. While there is a considerable amount of group selfishness and wasted energy through counter efforts, sociologists are inclined to believe that the contention of these interest groups is the chief dynamic and progressive factor in political life.<sup>71</sup>

Beyond this illuminating identification of parties with interest groups sociologists have investigated the very important question

<sup>70</sup> Cf. De Greef, *La Constituante et le régime représentatif*; Durkheim, *De la Division du travail social* (2nd ed.), preface; *Le Suicide*, pp. 434ff.; Wallas, *Human Nature in Politics*; *The Great Society*; McDougall, *The Group Mind*; Cooley, *Social Organization*.

<sup>71</sup> See the works of Gumplovicz, Oppenheimer, Ratzenhofer, Small and Bentley referred to above; also Ward, "The Sociology of Political Parties," *American Journal of Sociology*, January, 1908.

of the development of oligarchical tendencies in political parties, which is one of the most threatening phases of modern democracy and perhaps its gravest defect. The psychological sociologists such as Le Bon, Sighele and Ross have suggested that this may be due to the prevalence of crowds and crowd psychological conditions in modern urban civilization, a situation which gives the unscrupulous leader or manipulator of crowds an unparalleled opportunity to exploit their weaknesses and instability.<sup>72</sup>

Graham Wallas has indicated the manner in which party leaders are able to make an emotional appeal to the citizens through party symbols and shibboleths and thus reduce to a nullity the critical capacity of the voters and make them easy victims of the party organization.<sup>73</sup> Professor Giddings believes that oligarchy in party politics is but one aspect of the operation of the sociological law that "the few always dominate." This is as true in other phases of political and social life as it is in partisan politics. Through differential reaction to stimulation, which is due to differences in individual capacity and opportunity, the alert and energetic few invariably dominate all situations and the oligarchical tendencies in political parties are but one manifestation of a universal social tendency.<sup>74</sup> Of course, few sociologists are naïve enough to imagine that the ostensible political bosses represent the real power in modern parties. They recognize what Bryce, Ostrogorski, Sumner, Weyl and others have pointed out, that the real power resides in the great economic interests, whose puppets and servants are the political bosses. This important fact constitutes the final answer to critics of American democracy who condemn it as the rule of the ignorant and propertyless classes.

All of these various contributions to the subject of the autocratic nature of parties have been brought together by Professor Robert Michels in what is unquestionably the most signal sociological contribution to the analysis of political parties. He

<sup>72</sup> See especially, Le Bon, *The Crowd*.

<sup>73</sup> Wallas, *Human Nature in Politics*.

<sup>74</sup> Giddings, *The Responsible State*, pp. 18ff.; *American Journal of Sociology*, March, 1920, pp. 539ff.

makes it clear how democracy requires organization for representation and government, how organization makes necessary leadership, how leaders are able to utilize the crowd psychological conditions that prevail in modern society and political life for their own interest and advancement, and how leadership and authority tend to develop arrogance, impatience of restraint and a lack of a sense of responsibility on the part of leaders.<sup>75</sup>

The remaining contributions of some significance which sociologists have made to the problem of political procedure are related to the matter of providing for some rational and effective method of decentralizing the overburdened and dangerously artificial national state. There are, to be sure, some sociologists who favor the growing tendency towards centralization in large political aggregates and who would even advocate further extension,<sup>76</sup> but most of them agree that the present large national states were the product of dynastic ambitions in a past age when the duties of the state and the problems which confront political agencies were much less numerous and complex than those which have followed the industrial revolution and its reaction upon society and politics. They feel that the large national state is both incompetent to deal with such a variety of problems in any detail and unable to arouse the necessary interest on the part of the citizens in political affairs. While admitting the necessity of preserving the unity of states for matters of international relations and for securing a common policy on matters which affect the whole population in much the same way, these writers contend that some method must be found which will secure specialized skill in administration and legislation and arouse a keen interest on the part of the citizens in public affairs.

One method of securing this result has been proposed by Durkheim and constitutes the sociological avenue to administrative syndicalism. He would have the state lay down general policies in legislation and then hand over the detailed application in special cases to syndicates of employers and employees.<sup>77</sup> The

<sup>75</sup> Michels, *Political Parties; a Sociological Study of the Oligarchical Tendencies of Political Parties*.

<sup>76</sup> For example, Tarde, Giddings and Ludwig Stein.

<sup>77</sup> Durkheim, *De la Division du travail social* (2nd ed.), preface.

gild-socialists would go even further and restrict state legislation to matters concerning the interests of consumers. Producers organized in improved trade-unions would be given practical administrative and legislative autonomy.<sup>78</sup> Another group of thinkers would solve the problem by territorial decentralization and the centering of political life around the natural community or the geographically unified region. Those who lay most stress on the importance of group or community believe that only by making the community the basis of social and political reconstruction can morale and efficiency be insured in political life.<sup>79</sup> The regionalists hold similar doctrines, but lay more stress upon the geographical factors determining the limits of the natural social and political units and less upon a community of interest.<sup>80</sup> Both groups would provide for unity in general policy and for protection from invasion through an improved type of federalism. Finally, the Italian sociologist and jurist, Vaccaro, believes that the future is bound to witness a process of political devolution and the development of small states adjusted to natural regional advantages and to administrative convenience. The large national states were a product of the necessity of finding some manner of avoiding war, but with the gradual elimination of war the very advantages of small states in times of peace will force a return to more natural and organic political units.<sup>81</sup>

#### VII. SOCIOLOGICAL OPINION ON LIBERTY AND RIGHTS

Sociologists have given little attention to the age-long question of the problem of whether or not authority is essential to liberty. In fact, most of them dismiss the question as scholastic and hold that it is self-evident that under any known condi-

<sup>78</sup> Cole, *Social Theory; Guild Socialism*.

<sup>79</sup> For example, R. M. Maciver and M. P. Follett. Both of these writers, of course, make common interest rather than geographical proximity the real test of community. For the most thorough sociological discussion of the distinction between society, state and community see Tönnies, *Gemeinschaft und Gesellschaft*.

<sup>80</sup> Geddes, *Cities in Evolution*; Geddes and Branford, *The Coming Polity*; Brun, *Le Régionalisme*.

<sup>81</sup> Vaccaro, *Les Bases sociologiques du droit et de l'état*, pp. 472ff.

tions of associated life some type of authority is essential to liberty if not to existence.<sup>82</sup> Only a negligible minority with essentially anarchistic leanings, such as Kropotkin, have denied this. Yet sociologists have done a useful service in setting forth the social foundations of liberty and in indicating the conditions under which liberal institutions are possible. In the first place, they make it clear that liberty is not primarily a political matter. Politics have nearly as little relation to human conduct as religion. Probably nine-tenths of the impulses to action and the inhibitions of the average citizen come from social and psychological influences and forces which are not even indirectly political.<sup>83</sup>

Confining themselves more specifically to the problem of political liberty, the sociologists have emphasized the fact that liberty and liberal institutions are not matters which may be deliberately willed by statesmen and put into operation without reference to the social environment. They have shown that a large degree of liberty is possible only in those communities or societies where there is a large amount of like-mindedness and cultural similarity, and where gross inequalities of culture, wealth and opportunity are relatively absent.<sup>84</sup> Further, states which are usually capable of allowing and enjoying a considerable degree of liberty in normal times may find it necessary in times of stress and danger, such as war or famine, to curtail greatly the normal amount of individual freedom of action. Liberty, both in its normal manifestations and in its temporary fluctuations, is a function or product of "circumstantial pressure" coming from the social environment.<sup>85</sup> Further, sociologists have recognized that it is unscientific, if not futile, to talk about some vague generalized liberty. There are many types of liberty, all of which must be provided for in a truly liberal state, as for example, civil liberty, economic liberty, religious liberty, personal liberty and

<sup>82</sup> Cf. Stein, *Philosophische Strömungen der Gegenwart*, ch. xv.

<sup>83</sup> Cf. Trotter, *Instincts of the Herd*; Ross, *Social Psychology*; and, above all, Sumner, *Folkways*.

<sup>84</sup> Giddings, *Inductive Sociology*, pp. 225ff; Ross, *Social Control*, pp. 411ff.

<sup>85</sup> Giddings, "Pluralistic Behavior," *American Journal of Sociology*, January and March, 1920.

so on. Professor Hobhouse, in particular, has attempted to classify and define the various types of liberty and to give greater precision to this line of discussion.<sup>86</sup> The most significant recent sociological contribution to the doctrine of liberty is contained in Wallas' *Our Social Heritage*. He makes it clear that any socialized theory of liberty must provide, not only for the removal of all obstructions in the way of using one's faculties, but also for the conscious and organized will to use them. Liberty is, thus, a positive as well as a negative concept. On these grounds Wallas finds that the Periclean notion of liberty is far more helpful than the negative definitions of John Stuart Mill and Sidney Webb.

The sociological view of political rights is that they are those "rules of the game" in the social process which are accepted and applied by the community through constitutional or statutory law. But by far the most significant contribution which sociologists have made to the subject of political rights is to rejuvenate the doctrine of natural rights, divest them of their metaphysical origins and implications, and give them an essentially evolutionary restatement. They reject completely the notion that the natural is identical with the primitive and that natural rights are those liberties and immunities which man has brought over with him from the primitive age into political life. Rather, what is natural is that which seems to be in harmony with the essential conditions of existence and development as revealed by the evolutionary process. Natural rights, then, are those types of individual immunity and freedom which seem on the basis of the observation of the process of social evolution to be most conducive to the most effective functioning and the most rapid development of the social organism. As such they are the indispensable foundation and guide for all moral and legal rights.<sup>87</sup> Professor Giddings has concisely summarized this sociological view of the nature and importance of "natural rights."<sup>88</sup>

<sup>86</sup> Hobhouse, *Liberalism*, especially ch. II.

<sup>87</sup> Giddings, *Principles of Sociology*, pp. 418-19; *The Responsible State*, pp. 59-68; Hobhouse, *Social Evolution and Political Theory*, pp. 196-200; Cooley *Social Organization*, pp. 46-48.

<sup>88</sup> Giddings, *Principles of Sociology*, p. 418. This doctrine is, of course, destructive of that theory of natural rights which has flourished in the chambers of the United States Supreme Court.



"Natural rights, as the term was once understood, have gone to the limbo of outworn creeds; not so those natural norms of positive right that sociology is just beginning to disclose. Legal rights are rights sanctioned by the law-making power; moral rights are rules of right sanctioned by the conscience of the community; natural rights are socially necessary norms of right, enforced by natural selection in the sphere of social relations; and in the long run there can be neither legal nor moral rights that are not grounded in natural rights as thus defined." Professor Giddings also insists that from the sociological point of view natural rights cannot be monopolized by the individual; the community can claim natural rights as well:<sup>89</sup>

"Natural rights are of two categories. There are natural rights of the community, and natural rights of the individual. Both the community and the individual have a natural right to exist and a natural right to grow or develop.

"If mankind or any moiety of mankind has a moral right to exist, a community or society has such a right because it is only through mutual aid that human life is possible, and only through social relationships that the intellectual and the moral life of man can be sustained."

It is this doctrine of the natural rights of the community, or the conception of social interests, which has greatly influenced progressive sociological jurisprudence.<sup>90</sup> Moreover, as Mr. Wallas has insisted in his most recent work, it is necessary to adopt a dynamic theory of natural rights. Evolutionary products are rarely permanent and transcendental. Natural rights, that is, socially necessary rights, must vary in their content with changes in general social conditions and institutions. Rights which may have been socially "natural" in a primitive community may have ceased to be such at the present time. Natural rights, then, are a product of social needs and interests, and must necessarily vary in their character with the progress of the social order.

<sup>89</sup> Giddings, *The Responsible State*, p. 65. Graham Wallas has also emphasized this point of view in *Our Social Heritage*, Ch. viii.

<sup>90</sup> Cf. Pound, "A Theory of Social Interests," *Publications of the American Sociological Society*, Vol. 15, (1920).

## VIII. THE SCOPE OF STATE ACTIVITY

The sociologists have devoted considerable attention to an attempt to discover an adequate definition of progress. Comte looked upon it as a gradual triumph of the scientific outlook over the theological and the metaphysical. Spencer and Bagehot both viewed it as the more perfect adjustment of the organism to the environment. Lester F. Ward regarded it as essentially the increase of human happiness through the overcoming of ignorance and error. Giddings has stated his belief that the essence of progress is the amelioration of the biological conflict between individual interest and race interest. Ratzenhofer and Small hold that it consists in the gradual substitution of coöperation for conflict. Hobhouse believes that it consists in the development of harmonious relations in society and the more perfect development of coöperative activity. Professor Tenney looks upon progress as a substitution of integral for partial satisfaction in the standard of life. Professor Cooley has recently made a plea for a tentative theory of progress.<sup>91</sup>

Much more important than these representative formulations of the idea of progress have been the sociological conceptions of the manner in which progress is achieved and the relation of the state to this process. The earlier sociologists, under the spell of the Darwinian doctrine and the belief in the inheritance of acquired characters, and impelled at every turn to apply it by direct analogy to human society, were inclined to believe that progress was a spontaneous and inevitable product of natural processes working in an evolutionary manner. Human effort could not hasten the process, but might fatally retard or divert the movement. Hence, Darwinian biology plus the biological analogy applied to human society served to bolster up a doctrine of political quietism and individualism in much the same way

<sup>91</sup> Professor A. J. Todd has produced a comprehensive compilation of the various notions of social progress. See his *Theories of Social Progress*. Professor A. A. Tenney has been working for some time on a plan to present an objective estimate and measurement of progress. Gumplovicz and Le Bon differ from most sociologists in denying that there is any definitive verifiable progress.

that the appropriation of Newtonian mechanics for social philosophy a century earlier provided a pseudo-scientific foundation for the individualistic political philosophy of the physiocrats and the classical economists. The most forceful exponents of this point of view among sociologists were the Englishman, Herbert Spencer, the Russian, Jacques Novicow, the Austrian, Ludwig Gumplowicz, and the American, William Graham Sumner.<sup>92</sup>

More recently, however, sociologists have inclined to the view that "the theory of continuous automatic inevitable progress is impossible," or that, if possible, it is a slow and expensive matter as compared with the acceleration and direction of the process by the conscious control of the human mind. They believe that though the evolutionary process in society has been, down to the present, a genetic and spontaneous development, the time has now arrived or is fast approaching when social science will enable the human mind to take conscious charge of the developmental process and insure more rapid and certain progress with a minimum of social cost. This transition from the domination of natural genesis to social telesis they view as the real turning-point in the evolution of humanity. While this notion was clearly expressed in a somewhat erratic and fantastic manner by the French Utopian socialist, Charles Fourier, and implicitly accepted in the social philosophy of Comte, it was an American sociologist, Lester F. Ward, who made this the pivotal point in what is perhaps the most imposing body of sociological doctrine which has yet appeared. More recently it has been defended with equal vigor by the English sociologists, Hobhouse and Wallas.<sup>93</sup> It is, of course, the point of departure for all scientific social economy and is one of the two or three epoch-making contributions of sociology to political theory and practice.

<sup>92</sup> Spencer, *First Principles*, pt. II; *The Study of Sociology*; Novicow, *Les Luites entre sociétés humaines*; Sumner, "The Absurd Attempt to Make the World Over," *War and Other Essays*, pp. 195-210; Gumplowicz, *Outlines of Sociology*, p. 207. While a believer in spontaneous development, Gumplowicz inclined to the view of cycles rather than progress in history.

<sup>93</sup> Ward, *Pure Sociology*, pp. 463ff., 551, 573-75; Hobhouse, *Development and Purpose*; *Social Evolution and Political Theory*, ch. VII; Wallas, *Our Social Heritage*.

The attitude of sociologists with respect to the nature of progress has colored if not wholly determined their stand with respect to the scope of state activity. Believers in automatic evolution, such as Spencer, Novicow, Gumplowicz and Sumner, have counselled a policy of complete *laissez faire*. Holding that laws only create new problems, while failing utterly to remedy the situation at which they are aimed, Spencer would limit the state solely to the function of protecting the life and property of citizens and repelling invasion.<sup>94</sup> Novicow bitterly criticized the incompetence of the state in all phases of activity, save that of serving as the communal policeman, and his views on the proper scope of state interference coincided with those of Spencer.<sup>95</sup> Gumplowicz, maintaining that social institutions are the product of "blind natural laws," holds that the chief practical value of sociology is the discouragement of any attempt to hasten or alter social development through legislation.<sup>96</sup> Sumner contended that no social class had any moral obligation to protect the interests of any other class, that social legislation only tended to crush and eliminate the healthy middle class of "forgotten-men" in order to conserve and increase the class of defectives, and that the sociologist's message to the class of reformers or "ignorant social doctors" was "mind your own business!"<sup>97</sup> The *laissez-faire* position has also been defended from the standpoint of obscurantism and aristocracy by W. H. Mallock, Gustave Le Bon and Frederic Le Play.<sup>98</sup>

On the other hand, Lester F. Ward vigorously criticizes as "Misarchists" and obstructionists such writers as Spencer and Sumner and defends the entry of the state upon an ambitious program of social legislation, but he strongly contends that before any such attempt will be either scientific or feasible government

<sup>94</sup> Spencer, *Social Statics; Man versus the State; Principles of Ethics*, pt. iv; *Study of Sociology*, pp. 270-71.

<sup>95</sup> Novicow, *Les Luittes entre sociétés humaines*, pp. 277, 335, 341, 355, 494, 604.

<sup>96</sup> Gumplowicz, *Socialphilosophie im Umriss*, pp. 77-90.

<sup>97</sup> Sumner, *What Social Classes Owe to Each Other*.

<sup>98</sup> Mallock, *Aristocracy and Evolution; The Limits of Socialism*; Le Bon, *La Psychologie politique*; Le Play, *L'Organisation de la famille; La Constitution essentielle de l'humanité*.

must be reorganized in such a manner as to give social scientists a controlling position in advising and shaping such legislation. Ward is, then, as little of an exponent of indiscriminate social legislation by the present incompetent political agencies as was Spencer or Sumner.<sup>99</sup> Essentially the same attitude has been taken by Hobhouse, Ludwig Stein, Schäffle and Duprat.<sup>100</sup>

While the position taken by the majority of sociologists thirty years ago was more sympathetic with the views of Spencer than those of Ward, the tendency since that time has been to swing to Ward's point of view. Most sociologists are, however, careful to indicate that they are taking an eclectic rather than a dogmatic position in doing so. As Professor Giddings has expressed this reservation, "the worst mistake that political philosophers have made has been their unqualified approval or condemnation of *laissez faire*."<sup>101</sup> Professor Cooley also contends that "we must, of course, take the relative point of view and hold that the sphere of government is not, and should not be fixed, but varies with the social condition at large. Hard-and-fast theories of what the state may best be and do we may well regard with distrust."<sup>102</sup>

Sociologists further maintain that the only criterion for deciding as to the validity of any proposed social legislation is the facts in the case, carefully gathered and critically presented through refined statistical methods, thus sharing the view of the German historical economists and W. Stanley Jevons.<sup>103</sup> An important addition to the theory of state activity is embodied in the above-

<sup>99</sup> Ward, *Dynamic Sociology*, II, pp. 212-50; *Outlines of Sociology*, pp. 187-89; *Psychic Factors of Civilization*, pp. 309-12; *Pure Sociology*, pp. 568-69. Cf. Dealey, "Eudemics a Science of National Welfare," *Publications of the American Sociological Society*, Vol. 15, 1920.

<sup>100</sup> Hobhouse, *Social Evolution and Political Theory*, chs. VIII-IX; Stein, *La Question sociale*, pp. 122, 267ff., 281ff., 314; Schäffle, *Bau und Leben des sozialen Körpers*, II, pp. 427ff.; *The Quintessence of Socialism*; Duprat, *Morals; a Treatise on the Psycho-Sociological Basis of Ethics*, pp. 204ff., 256ff., 274ff.

<sup>101</sup> Giddings, *Principles of Sociology*, p. 353. In later years and especially since the World War, Professor Giddings has moved further forwards a eulogy of state-activity.

<sup>102</sup> Cooley, *Social Organization*, p. 403. Cf. Ross, *Principles of Sociology*, p. 624.

<sup>103</sup> Ward, *Glimpses of the Cosmos*, II, pp. 168-71.

mentioned proposal of Durkheim to hand over the specific application and administration of law to functional or occupational associations. It has frequently been asserted that though a greater degree of state activity might be required to deal with the complex problems of modern society, yet the administrative machinery of the over-centralized national state would be inadequate for the task. Such a proposition as that which Durkheim suggests would give large scope to state activity and secure unified policy, and yet would make possible specialized and competent administration.<sup>104</sup> In an important way this view furnishes the sociological foundation for administrative syndicalism.<sup>105</sup>

#### IX. INTERNATIONAL RELATIONS

Sociologists have devoted no little attention to the problems of nationality and international organization. The now popular doctrine that nationality is a cultural rather than a political concept, which is associated especially with the writings of A. E. Zimmern, was set forth with clarity and vigor by Novicow thirty years ago.<sup>106</sup> Gumplowicz developed much of his sociological and juristic doctrine from an observation of the problems and difficulties involved in maintaining one political authority over the diverse national groups within the old Austro-Hungarian Dual Monarchy.<sup>107</sup> An extremely important contribution to a significant phase of this subject has been made by the eminent Belgian sociologist, Guillaume De Greef, in his notion of the necessity of adopting a sociological point of view in dealing with frontiers. He insists that the notion of a fixed and definite political boundary, or even a "natural" geographical frontier is essentially fallacious. The only true boundaries or frontiers are the continually changing lines which express in a rough geographical and political way the resultant of the pressure exerted by social groups. It is utterly hopeless to expect to lay

<sup>104</sup> Durkheim, *De la Division du travail social* (2nd ed.), preface.

<sup>105</sup> See Laski, *Authority in the Modern State*, ch. v, for a good review of administrative syndicalism.

<sup>106</sup> Novicow, *Les Luites entre sociétés humaines*, pp. 125ff., 239ff., 345.

<sup>107</sup> Gumplowicz, *Der Rassenkampf; Das Österreichische Staatsrecht*.

out even approximately permanent boundary lines which will mark off the territories inhabited by distinct ethnic groups. Differences in social pressure, which are indicative of differences in birth-rate, economic prosperity, group-coherence and so on, will soon serve to nullify any such attempt.<sup>108</sup> Finally, sociologists, especially such American writers as Commons, Ross and Fairchild, have investigated the matter of the admixture of national groups through immigration, and have concluded that it is highly detrimental to the well-being of a state if it goes on more rapidly than the process of assimilation.<sup>109</sup>

The majority of sociologists are inclined to hold that in spite of all the misery entailed by the accompanying warfare the development of the great national territorial states was an essential and beneficial process in order to reduce the possibility of war and conflict and to furnish the proper discipline in group life on a large scale.<sup>110</sup> Yet there are wide differences of opinion as to the morality and desirability of political expansion and imperialism among sociologists. Gumpłowicz has contended, in much the same vein as Machiavelli, that a state must continue a policy of aggressive territorial expansion or face inevitable decline or extinction.<sup>111</sup> Professor Giddings has defended modern imperialism in a sociological version of "the white man's burden."<sup>112</sup> On the other hand, Novicow and Nicolai have almost savagely attacked the views of Gumpłowicz, Treitschke and the exponents of the so-called "social Darwinism,"<sup>113</sup> and Sumner and Hobhouse have contended with vigor that imperialism and democracy cannot be reconciled.<sup>114</sup>

A great majority of the sociologists are agreed that the sovereign national state cannot be regarded as the final stage in

<sup>108</sup> De Greef, *Structure generale des sociétés*. Cf. *Political Science Quarterly*, Sept. 1910, pp. 505-8; and *American Journal of Sociology*, Vol. 10, pp. 61.

<sup>109</sup> Cf. Commons, *Races and Immigrants in America*; Ross, *The Old World in the New*; Fairchild, *Immigration*.

<sup>110</sup> Tarde, *Les Transformations du pouvoir*, p. 175.

<sup>111</sup> Gumpłowicz, *Outlines of Sociology*, pp. 150-53.

<sup>112</sup> Giddings, *Democracy and Empire*, especially chs. I, XVII.

<sup>113</sup> Novicow, *La Critique du Darwinism social*; Nicolai, *The Biology of War*.

<sup>114</sup> Cf. Hobhouse, *Morals in Evolution*, p. 68; *Question of War and Peace*. Sumner, *War and Other Essays*.

political evolution. Some form of international organization must be found which will eliminate national wars in a manner similar to that in which the national state has ended neighborhood and sectional wars. Novicow has proposed a federation of European states,<sup>115</sup> but, while most writers look upon federalism as the ultimate solution of the problem, they incline to doubt whether so close a form of union is feasible at the present time. They feel that any international organization which will not invite immediate disintegration and disruption must take as a nucleus a group of states with a considerable degree of homogeneity of culture and interests. Political likemindedness, as Professor Tenney has reminded us, cannot well proceed from cultural diversity and economic rivalry. Professor Giddings has put this point very succinctly.<sup>116</sup>

"A league to enforce peace must be composed of nations that will both keep faith with one another and practically act in coöperation with one another against the law-breaker. Practically, these requirements can be met, and will be met, only if the component nations of the league share a common civilization, hold a common attitude towards questions of right, liberty, law and polity, and share a sense of common danger threatening them from nations whose interests, ambitions, moralities and politics are antagonistic to theirs."

Some sociologists believe that ultimately, when higher cultural and juristic development has put an end to the perennial threat of war a period of political devolution will follow which will allow governmental units to assume a size that harmonizes best with geographical regions or unified districts of habitation or with administrative convenience and an alert public interest in political affairs. The age of the national territorial state and the

<sup>115</sup> Novicow, *La Fédération de l'Europe*.

<sup>116</sup> Giddings, "The Basis of an Enduring Peace," in *The Publications of the American Association for International Conciliation*, April, 1917, No. 113, pp. 16-17. For a thorough discussion of the relation of cultural homogeneity and likemindedness to any effective internationalism see Tenney, "Theories of Social Organization and the Problem of International Peace," *Political Science Quarterly*, March, 1915.



world organization of states must be looked upon as a temporary episode in the history of humanity and a necessary discipline of the race.<sup>117</sup>

#### X. EXTRA-LEGAL PHASES OF POLITICAL INSTITUTIONS

There can be no doubt that the most important of all the contributions of sociology to political theory and practice are those which deal with the extra-legal social and psychological phases of behavior and control.<sup>118</sup> In fact it is in this field that sociology can be more useful to political science than in a specific treatment of precise problems of politics. Sociology has analyzed the social foundations of the public order, the processes of social control and the origin and nature of obedience, and looks upon the state as one highly developed and specialized agency within society for enforcing uniformity of behavior and insuring order and obedience. Professor Ross in his famous work on *Social Control* has analyzed with originality and acumen the operation of the various socio-psychological forces which bring about order and conformity in society, such as custom, fashion, convention, public opinion, suggestion, beliefs and ideals, and has made clear after all how small a part political institutions play in maintaining order and uniformity in society. Walter Lippmann, in his brilliant *Preface to Politics* has made a notable contribution to this same field and has brought into play a somewhat more up-to-date psychology. Professor Giddings has indicated the various ways in which society secures conformity to behavior types and patterns, through what he terms the process of "social self-control."<sup>119</sup>

In his three works, *Human Nature and the Social Order*, *Social Organization*, and *Social Process*, Professor Cooley has indicated the elements of personality, ideals, organization and basic processes which lie back of political and economic processes and institutions. Graham Wallas in his *Human Nature in Politics*

<sup>117</sup> Vaccaro, *Les Bases sociologiques du droit et de l'état*, pp. 473ff.

<sup>118</sup> Cf. Lippmann, *Preface to Politics*; Ross, *Social Control*.

<sup>119</sup> Giddings, "Social Self-Control," in *Political Science Quarterly*, Vol. 24, No. 4 (1909); "Pluralistic Behavior," in *American Journal of Sociology*, January and March, 1920.

has attacked the older intellectualistic political psychology that characterized the Benthamite hedonistic calculus, and has indicated the importance of instinctive and emotional forces. In his later works, *The Great Society* and *Our Social Heritage*, he has both carried on his critical work and made helpful suggestions as to the solution of current political and social problems through "social invention" and more adequate forms of social organization and coöperative endeavor.

Special treatments of particular phases of the operation of socio-psychic factors are numerous. Among the more notable are Sumner's voluminous descriptive treatment of the sociological significance of customs, usages, folkways and mores;<sup>120</sup> Giddings' analysis of the sociological significance of the "consciousness of kind,"<sup>121</sup> Tarde's analysis of repetition, opposition and adaptation;<sup>122</sup> the importance of social impression and the crowd-psychological state as set forth by Durkheim; Le Bon and Sighele;<sup>123</sup> Trotter's telling statement of the great sociological importance of herd-instinct;<sup>124</sup> the emphasis of Ross, Sidis, Davenport and Wallas on suggestion;<sup>125</sup> McDougall's discussion of the importance of the gregarious and self-regarding instincts and the nature of the group-mind;<sup>126</sup> Sutherland's voluminous genetic and analytic exposition of social sympathy;<sup>127</sup> Kidd's insistence that religion alone has been able to furnish the chief bond of social cohesion and control;<sup>128</sup> and Fouillée's view of the nature, importance and evolution of "idea-forces" in society.<sup>129</sup> Most of these contributions to political psychology have been anti-

<sup>120</sup> Sumner, *Folkways*.

<sup>121</sup> Giddings, *Inductive Sociology*, pp. 91ff.

<sup>122</sup> Tarde, *Social Laws; Les Transformations du Pouvoir*.

<sup>123</sup> Durkheim, *Les Règles de la méthode sociologique; The Elementary Forms of Religious Life*; Le Bon, *The Crowd*; Sighele, *Psychologie des sectes*.

<sup>124</sup> Trotter, *Instincts of the Herd*.

<sup>125</sup> Ross, *Social Control*, chs. XIII-XV; *Social Psychology*, ch. II; Sidis, *The Psychology of Suggestion*; Davenport, *Primitive Traits in Religious Revivals*; Wallas, *Human Nature in Politics*.

<sup>126</sup> McDougall, *Social Psychology; The Group Mind*.

<sup>127</sup> Sutherland, *The Origin and Growth of the Moral Instinct*.

<sup>128</sup> Kidd, *Social Evolution*.

<sup>129</sup> Fouillée, *L'Évolutionisme des idées-forces*, especially introduction.

intellectualistic, but Ward and Hobhouse have pointed out the dangers in overemphasizing this point of view. While acknowledging the dominance of instinctive and emotional forces at present, they correctly insist that only through an improvement and utilization of intellectual factors can any definite future advancement be assured.

From another angle sociologists have set forth the importance of individual forces, such as the leadership of great men in social and political processes. Comte, Mallock, Le Bon, Galton, Ward, Michels, Sumner, Howard and Mumford have analyzed the problems of leadership from various angles, historical, cultural and political; and Professor Cooley has succeeded fairly well in the difficult task of working out a synthesis of the individual and social influences operating in society and politics.<sup>130</sup>

A number of writers, especially Cooley, Tarde, Ross, McDougall and Sumner have dealt with the subject of public opinion, have given this concept more precision and have indicated its relation to political processes.<sup>131</sup> Lester F. Ward has discussed the sociological nature and uses of education with a profundity and thoroughness not equalled by any other writer.<sup>132</sup> Professor Ellwood has brought together a synthesis of these psychological factors in a work which is easily the most comprehensive and scholarly contribution yet made to sociology from the psychological standpoint.<sup>133</sup> Finally, it should be remembered that those biological, economic and geographical factors in the state which were dealt with above also fall logically within the scope of sociological contributions to the extra-legal aspects of politics, and that the whole sociological analysis of the social process furnishes the indispensable propaedeutics for the study of political science.<sup>134</sup>

<sup>130</sup> In addition to the works of these authors which have been mentioned above, see Galton, *Hereditary Genius; Inquiries into the Human Faculties*; Mumford, "The Origins of Leadership," *American Journal of Sociology*, Vol. 12.

<sup>131</sup> See their works as cited above.

<sup>132</sup> Ward, *Dynamic Sociology*, II, ch. XIV.

<sup>133</sup> Ellwood, *Sociology in Its Psychological Aspects*. For the best guide to the literature of this subject see Howard's *Syllabus of Social Psychology*.

<sup>134</sup> Cf. Giddings, *Principles of Sociology*, bk. II, ch. I; Small, *General Sociology*, pp. 198ff.

## XI. POLITICAL THEORY AND THE SOCIAL ENVIRONMENT

One of the most widely accepted of the present views concerning the history of political theory is that the type of theory is normally closely related to the social environment from which the author draws his material and receives his stimuli. Kropotkin, Oppenheimer, Gumpłowicz, the French social psychologists, and Mc Dougall are good examples of sociologists whose contributions may be traced directly to their social environment.<sup>135</sup> The work of Sumner and Trotter on the mores and herd instinct has thrown much light upon the basis for the relation between social environment and social theory, but Professor Giddings has gone further than any other sociologist in his attempt to explain the correlation between the successive advances in social and political theory and the changes in the social and political environment. Modern analytical psychology is producing convincing evidence that there is another phase of the subject, namely, the complexes of the individual writer. The synthetic approach to the interpretation of the political theory of a given writer will doubtless have to be based upon both the social and the individual background.<sup>136</sup>

## XII. CONCLUDING ESTIMATE

Though the above rapid enumeration of the most notable sociological contributions to political problems would indicate that sociological writers have done something more than to "touch the substantial borders of the state," the most significant thing about sociology and modern political theory is that most of the changes which have taken place in political theory in the last thirty years have been along the line of development suggested and marked out by sociology. This is the best possible vindica-

<sup>135</sup> Cf. Lippmann's review of McDougall's *Group Mind* in the *New Republic*, December 15, 1920.

<sup>136</sup> Giddings, "Concepts and Methods of Sociology," *American Journal of Sociology*, Vol. 10; "A Theory of Social Causation," *Publications of the American Economic Association*, third series, V, No. 2; Article "Sociology," in *New International Encyclopedia*; *American Journal of Psychology*, July, 1913, pp. 360-77; *Ibid.*, April, 1918, pp. 159-81; *Psychoanalytic Review*, January, 1921, pp. 22-37.

tion of the sociological excursion into social science and political analysis. As Professor Small has very well said:<sup>137</sup>

"The only possible vindication of an intellectual movement is that people after a while find themselves thinking its way. It is as evident that all thinking about social relations is setting irresistibly towards sociological channels, as that all our thinking is affected by Darwinism. The solemn men, who return from reading the signs of the times with reports that there is nothing in sociology, deserve a stanza in the old song of Noah's neighbors. They knew it wasn't going to be much of a shower."

Of course, no one would be foolish enough to contend that this broader approach to political problems is ultra-modern or the contribution recent of sociology. From the time of Aristotle onward there have been writers who stressed the social, economic and psychological background of political phenomena. Aristotle's analysis of the psychological and economic factors in political institutions; Machiavelli's psychological study of leadership; Bodin's crude attempt to work out the physical and psychic foundation of politics; Althusius' emphasis on the group as the basis of social and political life;<sup>138</sup> Harrington's views on the importance of property and mental capacity in political activity and policies; Montesquieu's notion of political relativity, founded upon a sociological view of the factors creating and shaping the state; Ferguson's anticipation of Gumpłowicz in tracing the historical origins of the state; the economic interpretation of politics brought forward by the Ricardian Socialists; Hamilton's contention that the raw material of politics was to be sought in the facts of human nature and not in "musty parchments;" the keen analysis of the part played by property in determining political alignments which is contained in the writings of John Adams, Madison, Webster and Calhoun; and the contention of Calhoun that representative government should be based to a considerable extent upon the recognition of these elemental interest groups, are but some of the more conspicuous

<sup>137</sup> Small, *American Journal of Sociology*, Vol. 15, pp. 14-15.

<sup>138</sup> Probably Althusius will, sooner or later, be regarded as the real "founder" of sociology.

examples of a fundamentally sociological approach to the analysis of political phenomena.

This tendency was, however, interrupted and obstructed for a half century by the influence of the lawyers upon political theory and practice. So far did this go that we find so eminent a political scientist as Professor Burgess declaring, "I do not hesitate to call the governmental system of the United States the aristocracy of the robe and I do not hesitate to pronounce this the truest aristocracy for the purposes of government which the world has yet produced."<sup>139</sup> Even formal political science was for the most part dominated by the abstract metaphysical and legalistic approach and concepts of the Hegelian dialectic, the Austinian analytical jurisprudence and the German *Staatsrechtslehre*. Perhaps that which is most to the credit of this school is the frankness and cheerfulness with which they have admitted the fact that their doctrines have nothing in common with those of the sociological school.

This does not in any way imply that the sociological postulates cannot be harmonized with the viewpoint of the student of jurisprudence. It is not a matter of sociology versus law, but of sociology versus the type of law represented by the political doctrines of William D. Guthrie, or in the majority decision in the case of *Lochner v. New York* or that of the *Hitchman Coal and Coke Company v. Mitchell*. Indeed, some of the most significant and helpful impulses to the sociological orientation have come from such lawyers as Gierke, Maitland, Duguit, Pound, Freund, Kirchwey, Powell, Frankfurter, Goodnow, and from judges such as Holmes, Brandeis, G. W. Anderson and Learned Hand.

What modern sociology has done for political science is not to originate the synthetic approach to politics, but rather to put the lawyers of the metaphysical and "mechanical" schools to rout, and to restore the viewpoint of Ferguson, Hall, Madison and Calhoun. Indeed, it has done more than to restore this general

<sup>139</sup> *Political Science*, II, p. 365. Cited by Merriam, *American Political Ideas*, p. 155. Small wonder that Professor Burgess was not succeeded by the author of *Social Reform and the Constitution*.

viewpoint; it has strengthened and modernized it through an infusion of Darwinian and Neo-Darwinian biology and functional and behavioristic psychology. It would be futile to discuss whether this change has been due to sociological influences alone or to that general change of method and attitude that has been contemporaneous with the gradual development of sociology. Be that as it may, one cannot well escape from the conviction that it has been a product of the triumph of the "sociological movement," for there was certainly nothing in Austin or Dumont which would lead directly to Roscoe Pound and Léon Duguit, and little in Laband or Jellinek which would bring forth the doctrines of Graham Wallas, Ratzenhofer, Bentley or Beard.<sup>140</sup>

<sup>140</sup> Those who care to follow further a more detailed consideration of the contributions of leading sociologists to political theory will find articles in the *American Journal of Sociology*, September, 1917, July and September, 1919, September, 1921, to July, 1922; the *Journal of Race Development*, April, 1919; the *Philosophical Review*, May, 1919; the *Political Science Quarterly*, June, 1920; the *American Journal of Psychology*, October, 1920; the *Encyclopedia Americana* (1920) Vol. 25, pp. 166-86; the *Journal of International Relations*, October, 1921; and the *English Sociological Review*, 1921-2.

## THE INSTITUTE OF POLITICS

**Organization and Methods.** The Institute of Politics, held at Williamstown, Massachusetts, during the month of August, originated in a proposal made in 1913 by President Garfield of Williams College to the trustees of that institution. The plans of President Garfield were followed so faithfully in the final establishment and operation of the Institute that no separate description of those plans is needed here. Through the generosity of Mr. Barnard M. Baruch, who responded cordially to President Garfield's invitation to supply the funds needed for the project, and the liberality of the trustees of Williams College, the original conception was given complete fruition. Mr. Baruch's support was, moreover, pledged for the first three sessions of the Institute, thus making certain that meetings will be held in 1922 and 1923.

The work of the Institute was performed under President Garfield's direction, assisted by Mr. W. E. Hoyt, treasurer of Williams College, and Professors Weston and McLaren, also of Williams, and by a board of advisors among whom were Professors Taft, Coolidge, P. M. Brown, Moore, and W. W. Willoughby and Dr. J. B. Scott. Its object was—and will continue to be—to promote the study of international affairs.

The activities of the Institute were inaugurated by opening exercises in Grace Hall on July 29, when addresses were delivered by President Garfield, Chief Justice Taft, President Lowell, and Mayor Peters of Boston.

The work of the Institute during its first session fell into three divisions, namely, lectures, conferences, and outside activities. Of these briefly in their turn.

There were delivered, by distinguished European publicists, during the four weeks of the Institute, some fifty formal lectures on international questions grouped into six courses. The titles of the lecture courses and the names of the lecturers follow:

I. International Relations of the Old World States in their Historical, Political, Commercial, Legal, and Ethical Aspects, including a Discussion of the Causes of Wars and the Means of Averting Them. The Right Honorable Viscount James Bryce.



II. Russia's Foreign Relations During the last Half Century. The Right Honorable Baron Sergius A. Korff.

III. Near Eastern Affairs and Conditions. The Honorable Stephen Panaretoff.

IV. The Place of Hungary in European History. The Right Honorable Count Paul Teleki.

V. Modern Italy: Its Intellectual, Cultural and Financial Aspects. The Right Honorable Tommaso Tittoni.

VI. The Economic Factor in International Relations. Professor Achille Viallate.

The round table conferences, led by distinguished American scholars, were arranged in eight groups. They were conducted by the leaders and assisted by the secretaries named below:

I. *New States of Central Europe*. Leaders: Professors A. C. Coolidge and R. H. Lord of Harvard. Secretary: Professor Laurence Packard of Rochester.

II. *The Reparations Question*. Leader: Norman H. Davis. Secretary: Arthur Bullard.

III. *Treaty of Versailles*. Leader: Professor J. W. Garner of Illinois. Secretary: Professor Pitman B. Potter of Wisconsin.

IV. *New Frontiers in Europe and the Near East*. Leaders: Professor C. H. Haskins of Harvard; Colonel Lawrence Martin. Secretary: Professor Laurence Packard of Rochester.

V. *Fundamental Concepts in International Law*. Leader: Professor J. S. Reeves of Michigan. Secretary: Lloyd Haberly of Harvard.

VI. *Latin American Questions*. Leader: Director L. S. Rowe of the Pan American Union. Secretary: W. P. Montgomery of the Pan American Union.

VII. *Tariff Problems*. Leader: Professor F. W. Taussig of Harvard. Secretary: R. L. Masson of Harvard.

VIII. *Unsettled Questions in International Law*. Leader: Professor G. G. Wilson of Harvard. Secretary: Lloyd Haberly of Harvard.

The lectures were intended primarily for the members of the Institute, for whom seats were accordingly reserved. But they were, nevertheless, open to the public and were largely attended by visitors. The conferences were intended solely for those members of the Institute enrolled in them. Each member was expected to enroll in two, and only two, conferences. The result was that each conference contained some twenty-five or thirty members. The lectures were delivered in Grace Hall at 11.15 A. M. and 8.15 P. M., and were of an hour's duration.

Conferences were held in four different buildings of Williams at 9 A. M. and 2:30 P. M., and lasted from one and one half hours each, depending upon the inclination of the leader, the up for discussion, and the amount of discussion which developed. Ample supplies of books and documents were available for the members of the conferences as a result of the generosity and of those in charge of the Institute and the staff of the Williams library.

The conferences were conducted in some cases as lecture discussion groups, in other cases as seminars with reports by members of the conference and general discussion based thereon. In the case distinguished visitors were often invited to be present and the conference; certain of the lecturers attended the conference time to time and spoke briefly. The bulk of the work was, however, done by the members of the conferences, who were provided secretaries with outlines, bibliographies, and reading references on topics coming up for discussion. Here also the discussions centered upon the most critical international problems of the day.

The members of the Institute numbered one hundred and eight. About one quarter of these were women. Substantially all of the members were thirty-five years of age or over. About half were academic people of one grade or another, including three presidents and forty-seven teachers of professorial rank. Prof. C. F. Johnson contributed some fifty lawyers, diplomats, clergymen, lecturers, authors, and journalists. The army and navy sent four gentlemen; a few Asiatic students—Indian, Chinese, and Japanese were present; and a few business men. All of these paid a nominal fee for the privilege of taking part in the work of the Institute.

The members came chiefly from one section of the United States as is shown by the following list:

Massachusetts.....	45
New York.....	35
Northeastern United States (not included above).....	21
Washington, D. C.....	8
Southern United States.....	5
Middle West.....	11
Far West.....	2
Asia.....	5
Europe.....	4
Latin America.....	2

The members were provided with good board and comfortable rooms in the college buildings at very reasonable rates. Those in charge even went so far as to provide these accommodations to members of the families of the lecturers, leaders, secretaries, and members. The faculty club opened its doors to all Institute visitors. Everyone was made as comfortable as possible.

Mention of living quarters in Williamstown leads directly to the outside activities of the members of the Institute. Of these, the principal one was conversation. At all times and places, but particularly at table in the Commons dining hall and in the reception room adjoining the dining hall, during the hours following lunch and dinner, there developed an active and serious yet very interesting and lively conversation where lecturers, leaders, secretaries, and members participated freely and equally, in casual and informal attempts to thresh out the truth about the Coto region, the codification of international law, the waterways clauses of the treaty, or the Baranya.

Not all of the conversation turned on international relations, of course. For there were plenty of opportunities for hill climbing in the Berkshires, for tennis on the college courts and golf on the links of the hospitable Taconic Country Club, for dancing, and for motoring over the Mohawk Trail and the other fine roads about Williamstown. A useful guide book was furnished to the members giving full directions for walks to Petersburg Pass, Tri-State Corner, Greylock, and other points of interest. The organ recitals given on Sunday afternoons and the numerous teas and receptions held in the afternoons during the session should also be remembered. But space does not permit, and dignity forbids, us to dwell on the many trips to the Post Office, the antics of the amplifier in Grace Hall, or the familiar doings of some of the *caractères célèbres* among the leaders and members of the Institute.

In retrospect it was felt that the one hundred and forty hours of work in the conferences contributed about one half of the value of the Institute, and the fifty hours of lectures and the outside activities about one quarter each in the total.

The Institute may be examined from two points of view. We may judge the result to see how far it met the plans of those in charge; and we may judge the plans of those in charge, as manifested in the result, to see whether they were all that could be desired.

Judged by the former standard, the first session was a thorough success. Those in charge had planned the operations of the session completely in advance and, as was frequently noted by members,

"everything went like clock work" as a result. The scheduled program was executed smoothly and thoroughly. When changes were needed they were made, promptly and effectively.

Some details might be mentioned wherein all was not perfect. Three of the lecturers could not be understood readily by their audiences, and two of them dealt too frequently in generalities and platitudes. Only two of the special addresses by prominent Americans materialized. At times some ambiguity arose respecting the exact intent and procedure of one or two of the conferences. In a half-dozen cases the members of the Institute were incompetent and in one or two cases a nuisance. By and large, however, the session was successfully carried out as planned.

When we turn to the plans as drawn, there are a few suggestions to be made. They should only be made, however, after a statement of the object or objects of the Institute. The Institute might be either a super-seminar or a super-chautauqua. As a matter of fact, it was, and probably must necessarily be, more or less of both. The lectures appealed to the amateur interest in international relations, the conferences to the professional interest. Two only of the lecture courses were sufficiently "advanced" to appeal to specialists; only one or two of the conferences were general in character. The lectures ought to be judged from the point of view of the majority of the members of the Institute, who were amateurs, albeit very high grade amateurs, in the field of international relations. The professional student and teacher must judge the Institute primarily by reference to the conferences. This being understood, it remains to be said that the number of lectures might well be diminished and a lecturer obtained from Austria or Germany and from one of the northern European neutral states. Such plans are already entertained for next year.

The number of conferences should be increased. This also will probably be done next summer. Further, the number of persons registered in each conference ought to be, and probably will be, diminished. Finally, visitors will be prevented from hampering—even inadvertently—the thoroughness of the scientific work in the conferences.

The last point suggests the most difficult problem of all. Should members of the Institute not enrolled in a certain conference, not to speak of visitors generally, be allowed to attend that conference and listen to the lecture-discussion? Much benefit is obtained from such visiting; the intensiveness of the discussion by the enrolled members is, however, somewhat impaired thereby. The two aspects of the Institute, as seminar and as chautauqua, come in conflict here.

In the opinion of the writer, it would be well if the conferences could meet in rooms where visitors could be accommodated, but in such a way as not to interfere with the discussions, and they should be prevented from interrupting the discussion in the conference. It may be objected that this would deter members from speaking fully for fear of being quoted, just as it was planned this year to exclude press representatives from the conferences for the same reason. The objection is not serious, if the evidence of the past session is reliable. There was, and must be, too much mixture of people in the conferences in any event to allow a military, naval or diplomatic official to speak too freely. On the other hand, all who were present at Williamstown seemed to be persons of discretion. Finally, the choicer bits of information and interpretation were, as they must be, passed about in conversation outside the formal conferences.

Finally, there should be no misunderstanding regarding the object of the Institute. The intention is not to give a beginner or an intermediate student a systematic course in international law or relations, but rather to offer to the advanced and mature student and the teacher of international law and relations an opportunity to fill out gaps in his background and information, to study certain selected details intensively, and to refresh his thought by a free exchange of ideas. It is not the intention to provide a pleasant vacation for idlers. Those who take part are expected to take part actively and sincerely.

The first session of the Institute was a success, and it provided suggestions for improvement for the next session. The enrollment threatens to be rather large unless rigorously limited in advance. With the Far East included in the subjects of discussion and such names as Redlich, Smuts, and Cecil rumored for lecturers, this may well be expected. It is, at all events, already evident that President Garfield and Mr. Baruch have given American a new and valuable institution of higher education in that, at present, most critical of all fields for study, international law and politics.

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**Lectures and Conferences.**<sup>1</sup> The inaugural exercises of the Institute of Politics were devoted to addresses explaining the circumstances

<sup>1</sup> The following notes were compiled from personal summaries made by the writer, as well as from newspaper reports of the lectures and from abstracts kindly furnished by the secretaries of the several conferences. Owing to the amount of

which had led to the conception of the idea of the Institute and the definite purpose which it was intended to accomplish. President Garfield referred to his original plan of bringing together college professors and instructors in history for the purpose of putting them in touch with the facts of present history and the statesmen who have been close to recent events. Chief Justice Taft laid stress upon the intention to make the Institute a symposium of views of leading thinkers, historians, and statesmen of important countries whose economic and political conditions and the public opinion of whose people were important to the world. Mayor Peters of Boston described the general purpose of the Institute. President Lowell pointed out the necessity at the present day of introducing a sense of responsibility on the part of the stronger nations for good order in the world and the means by which that responsibility might be made effective.

*The Lectures.* The series of lectures given by Lord Bryce was a development of the general topic of "the international relations of the old world states in their historical, political, commercial, legal and ethical aspects, including a discussion of the causes of wars and the means of averting them." In his opening address the speaker gave a general survey of the growth of law between nations from the days of the Greek city states down to the present time. The meaning of the sovereignty of states was explained and the necessity of inculcating a sounder and wider view of national interests, which in turn depended upon the moral progress of the individual men who compose the communities. The effect of the spread of democracy upon foreign relations was described and the methods of propaganda resorted to for the control of public opinion. In his second address the speaker showed that the seeds of future wars had been sown by the deliberations and findings of the Paris conference, and that the treaties drawn up there were already admitted to need amendment. The effects of the peace treaty upon the relations between Germany and France was pointed out and a dark picture drawn of the outlook for peace along the Rhine. The transfer of the Austrian Tyrol to Italy was severely criticised, as well as the secret treaty of 1915 which was the excuse made by Great Britain and France for their action. The possibility of a release of Russia from the present domination of a group of adventurers was discussed,

condensation necessary it is possible that inaccuracies may be found in the record of facts stated and views expressed. The intention of the writer has been to present the substance of the topics discussed, rather than to ascribe definite statements or opinions to the various speakers.

as well as the question of a later attempt on the part of Russia to recover the border states now separated from it. Explanation was made of the failure of the Christian powers to punish Turkey for its misgovernment of its subjects.

Financiers, it was pointed out in a subsequent lecture, had a great hand in the negotiations preceding wars and in fixing lines of policy, but it was not generally true that they were the makers of wars. The effect of international trade in drawing the peoples of different countries closer together was pointed out and contrasted with the effect of tariffs and other methods resorted to by states for protecting and increasing their domestic trade. The competition between Germany and Great Britain for the markets of the world and the jealousy felt by certain Germans towards British territorial possessions were discussed in their relation to the great war, and the assertion was made that the less governments had to do with business and international finance the better it would be for their peoples. Among the other causes of war stress was laid upon the growth of the sentiment of nationality during the nineteenth century. The earlier liberalism of the movement for national unity had given way to national vanity and selfishness, with the result that the lust for territory was still to be reckoned with. In addition there was the difficulty of mixed populations, for which the protection of minorities provided for in the peace treaties did not promise a remedy. Certain grievances created by the misapplication at Paris of the principle of self-determination must be cured before permanent peace could be obtained.

The codification of international law by an association composed of representatives of the civilized nations was, the speaker showed, the necessary preliminary to the formation of a tribunal competent to try offenses against international law and to enforce penalties on convicted offenders. There was need of developing the international law of peace as contrasted with the law of war which had received chief stress in the past. A definite and effective sanction was necessary if international law was to acquire any real force. The absence of any superior authority with power to impose upon nations those restraints which in a civilized country are imposed upon individuals was the chief reason why states had failed to live up to the moral standards demanded of honorable men in the relations of private life. Was it to be admitted that a different standard of morality applied to states than to individuals? What bearing had secret treaties upon the morality of states? It was difficult to take the management of foreign affairs from the

hands of a few and entrust it to the many, but at least public opinion could be kept better informed and consulted upon the larger issues.

Problems involved in the coming disarmament conference at Washington were described and set off against the urgent need for an agreement among the great powers to reduce their armaments. What scale could be fixed for each country which its army, navy, and aircraft should not in the future exceed? These would in each case be apportioned to the area and population of the country, but it was also necessary to consider the defensibility of frontiers, the means of communication within the country, and the possibility of internal disturbances. An international board of inspection might be set up to watch over the fulfillment of the undertakings made to keep within the prescribed limits.

In a final survey of the world situation Lord Bryce pointed out that some positive step must be taken in the way of international organization to provide for the settlement of disputes between states. The difficulties in the way of such an organization arising from the political inequality of states and from the attempt to apply an effective sanction were great, but the alternative was war and the destruction of civilization. Henceforth all nations had a common interest in the maintenance of peace, and the United States could not afford to refuse to coöperate. The present members of the League of Nations meant, he said, to continue to support the only plan yet launched which promised success.

"Russia's foreign relations during the last half century" formed the subject of the series of lectures given by Baron Sergius A. Korff. The opening address reviewed the relations between France and Russia before and after the formation of the Dual Alliance. In making this alliance, the speaker said, France had seriously miscalculated the future of Russia by helping the Russian reactionaries to suppress the liberal elements which would in the end have proved a far more reliable support to republican France. The money loaned by France to Russia helped to maintain a degenerate autocratic government which was fated to fall sooner or later. In spite, however, of the wrong purposes to which the French loans had been put by the Russian government, there was not the slightest danger that these loans would remain unpaid, although the interest might be held up for a number of years. The whole commercial future of Russia was dependent upon her credit, and besides she had ample natural resources to meet the demands upon her.



The relations between Russia and Great Britain were marked by the gradual transition from an attitude of mutual hostility to one of friendship. The two nations were often close to war in the years following the Congress of Berlin in 1878. Later it was seen to be to the interest of peace in the west that Great Britain should draw closer to Russia, but in so doing she had been obliged to sacrifice Persia to the demands of Russian autocracy. Gradually Great Britain had become convinced that Germany, not Russia, was her real enemy, with the result that by 1914 the Triple Entente was ready to oppose the Triple Alliance. By contrast, Russia's relations with Japan, which were of comparatively recent origin, had been marked by a growing militaristic attitude. Japan had learned after 1895 the European methods of double-dealing, and she applied the teachings to Russia and China. Bad feeling between the two nations was intensified by the determination of some Russian adventurers, aided by the Czar, to obtain concessions in Korea. Internal troubles in Russia had forced her to conclude a premature peace with Japan, for Russia's position could not have been made worse by the delay of peace, while Japan was at the end of her resources and was saved by President Roosevelt's intervention from an economic collapse which might have called for constitutional reforms in Japan as well.

Relations of Russia with Austria were marked by the clash of racial ambitions. Slavism competed with Teutonism for the control of the Balkan states. The story was one of parallel alliances, intrigues and mutual distrust. Relations fell into three periods, from 1878 to 1897, when distinct tension was evident, from 1897 to 1908, a time of relative friendship, and from 1908 to 1914, during which relations became steadily worse until a final break became inevitable. The Balkan wars of 1912-1913 changed the whole aspect of the near-east policies of Russia and her relations with Austria. Vienna and Berlin had a new opportunity to spread their propaganda among the Bulgarian people, with the result that Bulgaria thought it to her interest to take sides with Germany and Austria in the great war.

The quarrel between Russia and Turkey was centuries old, due primarily to Russia's demand for an outlet to the sea. Its latest phase before 1914 was marked by the growing influence of Germany in Constantinople and the fear on the part of Russia of a national danger if Germany became intrenched on the Bosphorus. The relations between Russia and Germany were seldom friendly. The various treaties that were made between the two countries were regarded by Germany,

simply as insurance, the main object being to build up an alliance with Austria. Bismarck was not much impressed with the strength of Russia but certain German generals had urged a preventive war as early as 1888. The coolness of Germany towards Russia led to the very thing Bismarck feared, a rapprochement between Russia and France.

Baron Korff's final lecture dealt with secret diplomacy and its evils. Parliamentary government, it was shown, had left secret diplomacy still possible, though less probable. The device of creating a *fait accompli* had often been resorted to by diplomats to force the hand of parliaments. Secrecy did much to harm the Franco-Russian alliance because it prevented public opinion in both countries from supporting the Russian constitutional movement; while secret diplomacy was alone to blame for the Russo-Japanese conflict. The whole machinery of diplomacy needed overhauling. Foreign offices must be modernized in respect to their personnel and better controlled as to their general policies.

The series of lectures given by the Hon. Stephen Panaretoff, Bulgarian minister to the United States, was devoted to "near eastern affairs and conditions." An introductory address reviewed the early history of the peoples of the Balkan peninsula with special reference to their racial antagonisms. The Bulgarians were, he showed, not Bulgars but Slavs. The handful of conquerors had given their name to the country but had soon been assimilated and lost from view. The success of the Turk both before and after the invasion had been due to lack of unity among the Slav peoples.

Succeeding lectures dealt with the history of the church in Bulgaria, its relations to political and social life, the past history of Bulgarian schools and the present status of educational institutions, and the outlook for constitutional and democratic government in the Balkan states. A saner press and a more enlightened public opinion as well as a healthier atmosphere among the political parties were, the speaker said, everywhere observable.

The future of the Turk in Asia Minor was dependent upon the abandonment of the policy of Pan-Islamism. The frank and sincere application of Turkey to Europe for help in reorganizing the country was its sole hope. Past experience with Turkish promises did not warrant the belief that the Christian populations would be protected from despotic government. The integrity of Turkey which had been so often supported in the past was no longer the slogan of European diplomacy. The haphazard interventions of the nineteenth century had brought

little relief to the Christian minorities. A definite plan of European control was needed.

Bulgaria's part in the world war was shown by Mr. Panaretoff to have been determined by the influence of ex-King Ferdinand with a cabinet of ministers avowedly pro-Austrian. Popular feeling might have overridden the will of the king if the Allies had offered more definite and concrete terms. The refusal of Serbia, Greece, and Rumania to make any concessions facilitated the task of the Central Powers in drawing Bulgaria to their side. The greatest stumbling block to Balkan confederation was the adjustment of territorial boundaries along national lines. The discussions of the Peace Conference were marked by vindictiveness and had confirmed the injustices of the treaty of Bucharest of 1913. It would have been better if the disputed regions had been put under an international control and their inhabitants given eventually a fair chance of declaring freely their wishes. The treaty of Neuilly must be revised, the speaker said, if there was to be permanent peace in the Balkans.

"The place of Hungary in European history" was the subject of a series of lectures by Count Paul Teleki, ex-premier of Hungary. The influence of geographical factors in the development of the political and economic life of Hungary was described in detail, and comparisons were made with the part played by geographical conditions in the development of the American nation. There were, the speaker said, four main facts in the history of Hungary which had had a decisive influence upon the course of history on the European continent. The Carpathians were one of the most formidable natural barriers, and were a perfect defensive frontier against inroads from the east as soon as one central power came to hold their whole length. Again, the acceptance by Hungary of western civilization and religion and the consolidation of its government had resulted in the division of the southern from the northern Slavs and had prevented a Slavic domination of Europe. The strong nationalism and centralized government of Hungary made it possible for her to be the chief bulwark against the advance of the Turk and to save Italy and western civilization. A high degree of culture was attained which would have resulted in a hegemony of the Balkans had not the victory of Turkey in 1526 driven a wedge through the nation and depopulated the central region.

When the Turk was finally driven out the national government was in the hands of an Austrian dynasty which recolonized the devastated areas in such a way as to destroy the Hungarian national character.

Foreign settlers, German, Slovak, Serbian, and Rumanian were invited to immigrate into the country, with the result that Hungary was changed from a national state, 80 per cent Magyar, into a polyglot state in which by 1789 the Magyars formed but 39 per cent. The racial question in Hungary was thus primarily the result of immigration forced upon the country against its will, and unfortunately Hungarian statesmen failed to meet the situation by taking measures to assimilate the alien nationalities. By the middle of the nineteenth century the separate nationalities, encouraged by the imperial government, were past the stage of possible assimilation, and the Hungarian government could do no more than spread the use of the Magyar language as a medium of commercial and social communication.

After discussing the pre-war economic condition of Hungary, the speaker dwelt in detail upon the disastrous effects of the decisions of the Peace Conference. The flour mills of Budapest, second only in capacity to those of Minneapolis, were at a standstill because their former supply of wheat was cut off by the prohibitive export laws of Yugoslavia. Of Hungary's timber lands 90 per cent had been taken from her and pasture land must now be reforested. Hungary had lost control of the headwaters of her rivers, with the result that irrigation projects would meet with greater difficulties and the danger of floods had been increased by the cutting of forests in Transylvania by Rumanians. Worst of all the new boundary lines cut directly through the area known as the 'market line' where commerce between the highland and the lowland regions was most intensified.

Bolshevism in Hungary was a foreign product, transplanted by a determined and unscrupulous minority, against the wishes of the majority of the population. Its collapse was due to its inability to organize production, helped on by the dogged resistance of the Hungarian peasant farmer. The chief difficulty in the way of economic improvement lay in the restrictive barriers set up by commercial treaties. The whole system was one of mutual chicanery. But in spite of these obstacles Hungary meant to work out her own salvation by a fearless and scientific study of the facts before her.

A series of lectures on "Modern Italy: its intellectual, cultural, and financial aspects" was given by Signor Tommaso Tittoni, president of the Italian Senate. Chief stress was laid by the speaker upon present economic conditions in Italy and their relation to world politics. The history of labor legislation in Italy was traced from the proclamation of the kingdom in 1861 to the present day. On the side of labor the

period of mutual aid which began with the unification of Italy was succeeded by a period of class struggle, which in turn was followed by the recent invasion of the factories by the workmen. This last phase had wisely been allowed by the government to run its course, with the result that the workers came to realize the difficulties of industrial management and communism rapidly lost ground. Various proposals for giving labor a share in the management of industry were now under consideration. In respect to the land problem the measures thus far taken to increase small holdings must be supplemented by an organic law for the sub-division of large estates. Signor Tittoni's observation of the many state and city owned industrial enterprises in Italy led him to the conclusion that municipal ownership was never desirable as an economic proposition, and that the fullest possible economic liberty should be reestablished as soon as war conditions were past.

The connection between Italy's industrial life and the problems of world politics was forcibly presented by the speaker in his plea for the abolition of discriminating prices and export duties in connection with the distribution of the raw materials of industry. The tendency of nations possessing a monopoly of raw materials to reserve them for their own use exclusively would have the effect of forcing the importing nations to put differential duties upon manufactured goods from those countries and to retaliate by similar export duties upon their own raw materials. The embitterment of the economic struggle thus resulting would, he said, throw the markets of the world into the greatest disorder. An international regulation of the distribution of raw materials was an essential condition of world peace. In like manner there was need of an international agreement to regulate and make stable the foreign exchanges. An international clearing house along the lines proposed by Luzzati might be set up, organized after the manner of the Universal Postal Union.

In his final address Signor Tittoni urged the return of freedom of immigration based upon bilateral agreements adapted to the different nations. Such freedom would conduce to the establishment of normal labor conditions, with resulting advantage to both countries.

"The economic factor in international relations" was the subject of the series of lectures given by Professor Achille Viallate of the École des Sciences Politiques of Paris. The opening address was devoted to a review of the "economic transformations" of the nineteenth century. A new era had been opened in which the economic factor had become one of the most important among those affecting the expansion

and the decline of nations. World markets had led to a movement towards internationalization, which had, however, been counteracted by the sentiment of nationality, with the result that the nations had attempted to constitute themselves independent economic units with conflicting policies of expansion. By the end of the nineteenth century Great Britain alone remained faithful to free trade. Protectionism had become the settled policy of the other nations, although a more liberal policy was to be seen in the provisions for most-favored-nation treatment. This latter clause had, however, been strictly interpreted by the United States, which had pursued a very independent protectionist policy against which Europe was unable to retaliate because of its need for American raw materials.

Following the earlier struggle of the nations to acquire exclusive colonial markets had come the attempt to obtain protectorates and spheres of influence in undeveloped countries. Later still the export of capital became a matter of increasing concern. Efforts were made to acquire special facilities and advantages in backward countries by financing their public and private needs. This had led to a confusion of economic and political control, known as "dollar diplomacy," which had its good as well as its bad sides. The policy followed by the United States of coöperating with the other powers in the development of China was in contrast with its exclusive attitude in dealing with Latin American problems. If the economic causes of war are to be diminished in the future the aggressive character of nationalist sentiment must be modified. International understandings must replace unrestrained competition in the development of backward countries. Henceforth no nation could afford to lead an isolated economic life.

*Round-Table Conferences.* The work of the round-table conferences may be conveniently presented under the following subject-headings: the general theory of international law; unsettled problems of international law; special Latin American problems; economic problems involved in tariff laws; problems arising out of the treaty of Versailles; the specific problem of reparations to be made by the Central Powers; and the related groups of problems connected with the formation of new states in Europe and with the determination of new boundary lines. Under these eight headings it was possible to discuss most of the important international questions now before the world or as many of them as the leaders of the conferences thought it desirable to raise. In some instances there was an overlapping of subject-matter as distributed between the conferences, but this was rather an advantage

than a disadvantage in so far as concerned the general object of the conferences.

The conference on the general theory of international law was conducted by Professor J. S. Reeves of the University of Michigan under the title "Fundamental concepts in international law in relation to political theory and legal philosophy." Eight fundamental questions in international relationships were examined critically with the object of laying bare the solid rock of international reality as the foundation for the reconstruction of international law. The "ends of international law" were first discussed, the attainment of international justice being shown to be the true end. International justice was to be determined not by abstract theories but by the honest expression of public opinion, which thus became the raw material of international law. International law, like national law, was a social product, and if it was to endure it must express the life and thought of the present day. The discussion on "the nature of international society" showed international law to be the natural result of the contact of state groups and of a desire of such groups to protect their mutual relationships. Hence it was important to determine the facts of modern international relationships, the protection of which was the basis of international law. The question of the "sanctions of international law" led to a discussion of the difference between the continental and the Anglo-Saxon conception of international law. The latter conception required a positive sanction of the type applied in municipal law, that is, the sanction of government.

"Sovereignty and independence" was discussed both historically and analytically, and it was shown that the concept of absolute sovereignty was erroneous in that it failed to take into account the necessary practical limitations upon sovereignty as well as the contradiction between an assertion of the legal nature of international law and the absolute power of the state. The idea of independence as necessarily absolute was also fallacious. In the discussions on "the equality of states" the equality was shown to be one of protection in the enjoyment of rights, that is, equality before the law, which did not predicate an equality of rights. Equality before the law was an essential condition of an enduring international organization. The "Declaration of the American Institute of International Law as to the rights and duties of nations" was criticised as being based upon an outworn doctrine of natural rights and as neglecting the international duties of states. The "doctrine of the reciprocating will" was discussed chiefly in connection with the recognition of new states. The United States

had recently "changed from its earlier *de facto* standard in determining whether there existed the combination in a state of will and machinery for its exercise, and now followed the principle of democratic legitimacy as a condition of recognition.

"The problem of codification" raised the question, which part of international law should first be codified. The laws of war were set aside as least proper for codification, being of doubtful "legal" character. Codification, it was said, should be confined at the outset to those portions of the law of peace upon which there was the most general agreement and in which there was the least element of strategic or political importance. The code must be adapted to changing facts and conditions. Formal codification would be likely to hinder the free development of international law.

The conference dealing with "Unsettled questions of international law" was conducted by Professor G. G. Wilson of Harvard University. In discussing the "present status of international law" it was shown that international law had stood the test of the great war and would be all the stronger for it. Since 1899 international law had developed more than throughout the whole of its previous history. The League of Nations was based upon international law, and the new permanent court would shortly be in existence for the judicial determination of the applications and limits of international law.

At the second session of this conference the topic of "Insurgency" was taken up by Professor P. M. Brown. The United States, it was shown, had used the embargo upon shipments of arms as a means of discouraging insurgent movements, and had assumed at times the position of judge in determining the issues between the insurgents and the established state. The responsibility of a state for losses to foreigners in time of insurrection was discussed, involving the question of the extent of protection which a foreigner entering a dangerous area might expect to receive from the government of the state.

The "law of leased territory" was treated by Professor Wilson with special reference to the Chinese leases of areas to Russia, Germany, and other powers. The subject of "the Panama Canal" raised the question of the sovereignty of the United States over the canal zone, as well as the question of the right of the United States to exempt its coastwise shipping from payment of tolls. The historical policy of the United States, it was shown, had passed through three successive periods of "internationalization," "joint neutralization," and "nationalization." The problem of "aerial jurisdiction" raised the question of



the need of a special law of the air. The attempt to build up a law of the air on the analogy of the law of the sea was liable to lead into error because of defects in the analogy. The prohibition of the use of aircraft in war involved the difficulty of making such prohibitions binding. In time of war it was likely that the military advantage of superior means of bombardment would dictate their use.

Further problems of the law of war were discussed under the titles of "armed merchantmen," "visit and search," and "retaliation." The Declaration of Paris, it was shown, had done away with privateers, but new problems had arisen in connection with volunteer navies subsidized by the government and converted into auxiliary warships on the outbreak of war. There were divergent views as to the legality of conversion at sea, and as to the validity of the distinction between armament for offense and armament for defense. Modern conditions had made it difficult to apply the old rules of visit and search at sea, yet the delay involved in taking vessels to belligerent ports, such as Kirkwall, worked injury. The search of neutral vessels by belligerents also worked injustice by leading to the disclosure of business secrets. It was a disputed question whether a belligerent, in retaliating against the enemy might take action affecting neutrals. The United States, it was said, had interpreted the law of necessity strictly, holding that retaliation was outside law and had no place against neutrals.

The conference on "Latin American questions" was conducted by Dr. L. S. Rowe, director of the Pan American Union. The "attitude of the Latin American peoples toward the United States" was the first topic on the program. Attention was called to the objections to the general designation of "Latin American." There were far greater differences both in political advancement and in social organization between the so-called Latin American nations than between the Latin nations of Europe. Three periods could be distinguished in the attitude of the Latin American countries towards the United States, namely, from the promulgation of the Monroe Doctrine to the Mexican war, from the Mexican war to the Pan American Congress of 1906, and from this last date to the present time.

A discussion followed on the development of American policy towards the Latin American republics with special reference to the Monroe Doctrine. A special report was presented upon the historical background of the Monroe Doctrine, and a second report upon the principles involved in the doctrine and the services it had rendered. The leader of the conference pointed out that the principles of the original Monroe

Doctrine were quite as vital a part of the policy of the United States at the present day as they were at the time of their publication. It was important to separate the principles of the original doctrine from the additions since made. There was no logical connection between the Monroe Doctrine and a policy of isolation. Nothing in the Monroe Doctrine need therefore prevent the fullest coöperation by the United States in any plan of world organization.

The movement for the federation of the Central American states was discussed from several points of view. The advantages which the states would derive from the union were pointed out and the reasons why the movement deserved the moral support of the United States. There were both strong and weak points in the Pact of Union signed at San José on January 21. Discussion followed upon the work of the convention sitting at Tegucigalpa.

A special report was made on the international situation arising out of the pending dispute between Chili and Peru relative to the status of the province of Tacna-Arica. Discussion followed as to the possibilities of a final settlement and the ways in which it might be accomplished. The pending treaty between the United States and Colombia was discussed both in its historical and in its political aspects, and a special report dealing with the attitude of the Colombian people towards the treaty was presented by a member of the conference from Colombia.

Relations of the United States with Haiti and the Dominican republic raised a variety of questions including a description of the circumstances which had led the United States to intervene in the affairs of the two republics, the difficulties involved in military government, and the problem of securing the cooperation and good will of the civilian population. A final conference dealt with the Mexican situation. Mexican problems, it was pointed out, were primarily social and economic rather than political. The elements of a constructive policy on the part of the United States towards Mexico involved both governmental and non-governmental coöperation. Outstanding differences between the two countries were discussed, as well as the question whether recognition should precede or follow a treaty providing for their settlement.

The conference on "Tariffs and tariff problems" was conducted by Professor F. W. Taussig of Harvard University. Recent developments in British commercial policy were discussed, particularly in connection with the movement in favor of preferential treatment of the colonies and the new measures pending in Parliament for the protection of key-industries and the prevention of dumping. The discussion of

French tariff problems brought out the system of maximum and minimum duties introduced by the Meline tariff of 1892. A sort of four-schedule system was now being considered with varying rates for different countries. German commercial policy, as exhibited in the Caprivi treaties, had been marked by a system of special negotiations to secure commercial favors with nearby countries.

Clauses of the peace treaty dealing with customs and commercial relations were considered, and the contrast was pointed out between the bilateral character of the provision for most-favored-nation treatment in the treaty of Frankfort and the unilateral character of the guarantee exacted from Germany in Article 264. The connection of the guaranty with the question of reparations was discussed. In the case of Austria the guaranty was qualified so as to permit special customs arrangements with the new states formerly part of the empire.

The tariff history of the United States from 1890-1913 was analyzed and the pending bill discussed in connection with it. The emergency act had raised the whole question of the protection of agricultural products under the permanent act. Radical changes were proposed in the administrative provisions of the act. General reciprocity arrangements had been provided for in the tariff acts of 1890, 1897 and 1909, permitting the President to conclude agreements without the consent of the Senate. The pending bill made provision for reciprocity agreements analogous to those of the act of 1897. Special arrangements had been made with other countries, such as Hawaii before the annexation, and Cuba since 1903. The colonial tariff policies of France, Germany and Great Britain showed contrasting tendencies, varying from the complete open door in the case of German colonies to greater or lesser degrees of preferential treatment by British and French colonies to the mother country.

On the merchant marine question the historical background was presented, and the Jones Act of 1920 was discussed with particular reference to the methods of protecting American shipping. The only way to help shipping, it was said, was by direct subsidy; all nations had come to that decision; discriminating duties could always be met by retaliation; It was a further question whether American shipping needed protection.

The conference on "Treaties of peace, especially the treaty of Versailles" was conducted by Professor J.W. Garner of the University of Illinois. The various methods by which war might be terminated were discussed and special reference was made to the possibility of

concluding war without a treaty of peace. Assuming that Germany acquiesced in the resolution of Congress and agreed to conclude a special treaty with the United States, it would even then be impossible for the United States to avoid recognizing the treaty of Versailles which had now become the law of the world upon the subjects with which it dealt.

Without the League of Nations the political settlements would have followed more closely the ideas and principles of the past century. French views regarding the left bank of the Rhine and the Saar basin were discussed. The disposition of Alsace-Lorraine was examined, as well as the provision for an independent Austria, and the rejected proposal for the complete dismemberment of Germany. Further discussion centered upon the confiscation of the German colonies and colonial interests, the Shantung question, and the provisions for disarmament by Germany.

Comment was made upon the lack of reciprocity in the economic and financial clauses of the treaty. The American attitude on the trial of the Kaiser was discussed. Stress was laid upon the value of minority protection as a means of rendering unnecessary the practice of the plebiscite in cases where it could not conveniently be held. The elaborate system of international servitudes imposed upon German rivers, canals, and ports was described, together with the difficulties created with respect to German sovereignty, and the means of continuing the privileges granted to the inland states after the expiration of the temporary period.

The two final meetings were devoted to a study of the League of Nations. It was pointed out that the league now comprised the overwhelming majority of the states of the world. The representation of the members in the organs of the league differed in extent, but all the members were under equal legal obligations. The Covenant was already being modified by interpretation and practice and several proposals for amendment were under consideration. The machinery adopted by the league for the preservation of peace remained voluntary, but resort to it was the ultimate object of all the powers of the league. The idea that the league was unimportant or ineffective was thoroughly discredited in view of its standing organization, its rapidly developing functions, and its accomplishments in the first eighteen months of its existence.

The conference on "the preparations question: its international aspects" was conducted by Mr. Norman H. Davis, former under secretary of state. It was pointed out that the agreement on reparations

reached at London on May 5, although announced as a general settlement, failed to contain three important elements of a definite settlement as originally laid down by the American delegation, namely, the fixation of a sum within Germany's reasonable capacity of payment, the determination of an amount which the creditor nations could afford to receive from her, and an agreement upon a sum which would seem sufficiently reasonable to the investors of the world to induce them to lend money to Germany upon promise of future payment. These three problems formed the subject of group-study, and a fourth section of the conference was appointed to report on the problems of international exchange arising from the reparation payments.

A résumé was given of the development of the reparations problem from the armistice negotiations to date. The organization of the commission on reparation of damages was discussed, together with the wide variety of views as to Germany's capacity to pay. Committee A then reported on the possibilities of Germany being able to produce a large enough surplus to meet the London agreement by establishing a favorable foreign balance. The unreliability of available statistics was pointed out. Markets must also be considered as well as the surplus of production over consumption. It was a doubtful prediction what Germany could be expected to produce twenty or thirty years hence. Committee B showed a division of opinion as to the amount of indemnity the Allies could afford to take. Protectionist and free trade policies were involved. It was hopeless to expect enforcement of the London agreement under the present conditions of protective tariffs and unequal foreign exchange. Committee C presented a discouraging report as to the prospects of a German loan being taken up by investors in the United States. Committee D submitted a proposal for mitigating the severity of the exchange situation. In conclusion Mr. Davis discussed the connection between economic rehabilitation and political conditions. All the financial and economic projects were being held up by the unstable and unnatural character of the political situation. The United States could not afford to be indifferent to the restoration of political stability.

The conference on "the new states of Central Europe" was conducted by Professors A. C. Coolidge and R. H. Lord of Harvard University. Professor Coolidge surveyed the sources and character of the information upon which frontier making was based, the relations of self-determination to geography, together with the ethnic, economic, and linguistic influences that determine nationality. How far did the present situa-

tion of the Central European nations approximate to a permanent and satisfactory adjustment of frontiers? What was the future of small states and the relation of political sovereignty to economic control?

A general statement of the outstanding problems of the new state of Yugoslavia was presented, followed by reports upon particular aspects of those problems from members of the conference who had been in recent and intimate contact with them. Professor Lord surveyed the composition of the new state of Czechoslovakia with reference to its racial elements. General discussion followed upon the combinations of the different peoples, the validity of census figures, political enthusiasm, and religious influences. Special reports were presented on Carpatho-Ruthenia and Slovakia. The territorial acquisitions of Rumania brought forth divergent opinions, Hungary's claims to the Banat of Temesvar and Russia's claims to Bessarabia being vigorously represented. A special report on the Dobrudja was submitted.

The present situation and future outlook of Poland was the subject of detailed treatment. A survey of the geographical aspects of the new state was followed by an estimate of the economic situation especially with reference to the extent of reconstruction in the textile and metallurgical industries. The important features of the new Polish constitution were outlined and certain legislative measures referred to. Discussion followed upon the agrarian reforms, currency depreciation, military demobilization, the question of religion, and the influence of the nobility upon the present régime. The factors leading to the establishment of the "corridor" to Danzig were described, and the claims of Poles and Germans in the disputed region were discussed. In like manner Professor Lord gave a history and analysis of the situation in Upper Silesia, East Galicia, and the Vilna area. Attention was called to the Hymans proposal that the Vilna territory should be united with Lithuania with extensive rights of self-government, and that in return Lithuania should agree to a loose union with Poland with respect chiefly to its foreign relations, commerce, and possible military coöperation.

The conference on "the new frontiers in Western Europe and the Near East" was conducted by Professor C. H. Haskins of Harvard University and Colonel Lawrence Martin of Washington, D. C. Professor Haskins discussed the sources of information for a study of the Peace Conference, together with the organization and procedure of the conference. Belgian problems were next taken up, with special attention to the relations of Belgium with Germany, and to the Flemish question and the final frontier settlements. Special reports were pre-

sented on the Schleswig plebiscite, on the coal deposits of Alsace-Lorraine, and on the mineral deposits of the Saar region. A special contribution was made by a former member of the league secretariat dealing with the relation of the Saar administration to the League of Nations.

Colonel Martin gave an outline of the geographical features of international problems, with special reference to those arising out of the peace treaties. The value of maps and the methods of work with maps were discussed. Austrian and Hungarian problems were then taken up. Special reports were presented upon the Klagenfurt plebiscite, the pro-German movement in Austria, railroads and lines of communication in Austria, minorities, and the religious question. The claims and grievances of Hungary were presented, with observations from members of the conference upon the points at issue between Hungary and Slovakia, the racial problem in Rumania, and the new Hungarian-Rumanian frontier. The discussion of the Turkish problem raised the question of the Tchataldja lines, the various claimants to Constantinople, and the secret treaties relating to Asia Minor. The Greek interest in Smyrna was explained and the relation of that city to Anatolia. The difficulties involved in the proposal of an American mandate over Armenia were discussed and the relation of that country to the Caucasus and to Anatolia.

In the study of the problem of mandates the social and territorial aspects were chiefly stressed. The economic development of Syria and Mesopotamia, reasonable profits upon invested capital, sources of wealth, methods of holding the mandatory state to an account of its trusteeship, and the rights of other nations to equality of treatment were taken up. The Russian problem was considered in connection with the question of partition and the boundaries of the border states. The will of the people of the border states rather than historical arguments, it was said, should be the first consideration. It was also important that Great Russia should not be cut off from the sea and left without economic rights. Poland needed Russian raw materials and a Russian market for her goods, hence it was important that friendly relations should not be impeded by a Russia irredenta within the Polish frontiers. It was a question whether Siberia, in view of its potential population and strength, had not better form a separate Asiatic state in order to minimize the danger of a military menace to the world.

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## LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

**Constitutional Revision in Pennsylvania.** On September 20 the people of Pennsylvania voted on the question of calling a constitutional convention. As this note was written, the indications were that the result would be in favor of this action, but the unexpected happened, and the vote was against the convention.

In anticipation of the proposed convention there had been prepared what no other constitutional convention has ever had at its opening session—the text of a new constitution containing, when compared with the present constitution, one hundred and thirty changes in substance, a complete rearrangement of articles and sections, and numerous stylistic changes made necessary by a strict adherence throughout to the use of the same words and phrases to describe the same things and ideas, and in connection with each section elaborate notes giving the text of the corresponding section of the present constitution, showing the exact nature of each change suggested, and the reason therefor.

This proposed constitution is the result of over a year's work on the part of a state commission created under an act passed by the legislature of 1919, and entitled the "Commission on Constitutional Amendment and Revision."

The idea of a commission charged with the duty of preparing the way for a constitutional convention by drafting suggested amendments or a suggested revision of the entire constitution, is merely applying to the process of constitution-making a device which has worked successfully in the drafting of other difficult pieces of legislation. For years we have had state commissions to prepare drafts of tax laws, workmen's compensation laws, revisions of various codes or parts of codes, etc., for submission to the state legislature. Such commissions are now a recognized part of the process of drafting legislation. Nevertheless, Pennsylvania is the first state to attempt to add to a convention, which is the recognized legislative body for constitution-making purposes, the machinery of a prior appointed commission charged with the



duty of drafting amendments or a complete constitution for the consideration of the convention.

The idea of such a commission was first publicly suggested by the Progressive, or, as it was called in Pennsylvania, the Washington party, in 1913. The legislative committee of that party caused to be introduced into the state legislature a series of bills providing for a constitutional convention, and the prior creation of a commission charged with the duty of predigesting the questions which would necessarily be discussed by the convention and submitting drafts of suggested constitutional changes. These acts passed the Pennsylvania house of representatives but failed of passage in the senate.

The movement for a new constitution made no headway in the State until the election of the present Governor, William C. Sproul, in 1918. The constantly increasing desire to tinker with the state constitution by amendment led the new governor to believe that the question of systematic revision of the constitution through the instrumentality of a constitutional convention should be seriously considered. He therefore advocated the creation of a commission to study the question of constitutional amendment and revision, and make report to the legislature setting forth the constitutional changes, if any, which they regarded as advisable, and whether in their opinion these changes should be embodied in a series of amendments or in a revised constitution. A revised constitution would of course involve the calling of a constitutional convention.

It will be perceived that the governor's object in advocating the creation of the commission was twofold: He believed that if the constitution was to be revised, the convention charged with that duty, no matter how distinguished the delegates, to do good work, must have the aid of the results of a prior systematic study of the present constitution in the light of modern thought and conditions. He also believed that the question whether there should be a revision of the constitution was so important, that before it was finally decided by the people, they should have the advice of the best commission which it was in his power to create.

The act creating the commission was passed in June, 1918. When the names of the members appointed by the governor were announced it was found that he had created a commission composed of twenty-three men and two women, leaders in their respective fields of activity. The bar was represented by the attorney-general, William I. Schaffer, who was designated as the chairman of the commission, and several

of the most distinguished lawyers in the state. Though the majority were Republicans, the leaders of the Democratic party were given places on the commission. There was a representative of organized labor, a college president, the provost of the University of Pennsylvania, representatives of the agricultural and of the business interests of the state, besides Gifford Pinchot, the conservationist and progressive leader, and T. De Witt Cuyler, a leading representative of large financial interests. None criticised the ability of the personnel, taken as a whole, but there was a very general feeling that the commission was unduly weighted on the conservative side, that the report would therefore probably be against any revision of the constitution, and that in any event men of large affairs, and lawyers whose fees ran up into the tens of thousands annually, could not be expected to devote the time necessary to study so important and intricate a subject as the revision of the state constitution.

The result has shown both these criticisms to be unfounded. The commission under the remarkably skillful guidance of its chairman took itself seriously from the start. Its meetings were held in the senate chamber at Harrisburg and were always open to the public. The debates, held with all the formality of a dignified legislative body, were stenographically reported, and are now printed in the "Proceedings of the Commission," the high average ability of the members of the commission making these proceedings the most interesting series of debates on modern state constitutional problems at present in existence.

The commission in the winter of 1920 published and distributed a preliminary draft of the changes in the constitution which appealed to them as worthy of consideration, and subsequently held public hearings which lasted almost a month. The suggestions made at the public hearings were all embodied in definite amendments, each of which was separately considered by the full commission.

When all substantive changes in the present constitution were acted upon by the commission, a committee on style spent several months in re-drafting the entire constitution of the state, except the bill of rights, in which no changes were made, in accordance with uniform rules of style, the main object of the work of the committee being to reduce to a minimum the possibility of controversy over the meaning intended.

When the commission began its labors the great majority of the members believed that the present constitution of the state, with pos-

sibly a few amendments, would be found sufficient to meet the new conditions which have arisen in the last fifty years. But when the work was done, they all realized that the reasons which impelled them to suggest a complete revision of the state constitution likewise impelled them to urge calling a constitutional convention.

It is not too much to say that the manner in which the commission discharged its duty produced a most favorable impression on the people of the state. The time devoted, the eminence, and on the whole, the decidedly conservative character of its personnel, have been sufficient to convince the average citizen that their conclusion that the state needs a new constitution is based on solid considerations, and not on a mere desire for innovation. Their report also convinced the governor that the state should have a new constitution, and Pennsylvania has not within the memory of the present generation had a governor in whose judgment there is such widespread confidence. His administration has been eminently successful. He has gathered into his cabinet representatives of all elements of his party, and the general character of the executive personnel of the state departments is high. In Pennsylvania what Sproul wants has usually been found to be right.

If the convention had been called it was to be constituted as provided in the act of assembly adopted by the legislature last winter. This act contains a feature which is new to American state constitution-making. While ninety-six delegates would be elected from congressional districts, twenty-five delegates-at-large would be appointed by the governor, and the governor announced that so far as they were willing to serve he expected to appoint the members of the commission. There was considerable discussion over this feature of the bill. Against the appointment of the delegates-at-large it was urged that a constitutional convention was a convention of the representatives of the people, and that to have it contain members appointed by the executive would constitute a dangerous precedent. Those who supported the provision pointed out that delegates-at-large could be nominated in one of two ways only; by party convention or by direct primary; that in either case a small group of leaders in each party would control the nominations because the number of delegates to be elected and the size of the electorate made it impossible for individual voters or groups of voters to have an effective voice. It was further pointed out that the electorate would have a much better chance to pass intelligently on the question of whether they desired a convention at all if they knew who the delegates-at-large were going to be, and that finally a convention only drafted a constitution for submission to the people who could adopt or reject it.

Without entering further into the merits of this controversy it is clear that the provision insures the presence in the convention of a group of eminent delegates who have devoted time and study to state constitutional questions. It also makes more than probable what otherwise might be very doubtful, namely, that the convention will on assembling take up at once the consideration, section by section, of the constitution proposed by the commission because that constitution will have been reported by what will have become a committee composed of twenty-five eminent members of the convention. All students of recent constitutional conventions will hope that the report of the commission and the presence in the convention of its members will make it unnecessary for the convention to divide itself into small committees on the legislature, the judiciary, public utilities, municipalities, etc., and that thus the convention will be able to get to work at once on the more important problems that confront it.

If the convention takes up, section by section, the report of the commission, this will not mean that the convention will adopt all or even the greater part of the changes recommended by the commission, or refuse to make a change not recommended. Although it is true that there was extraordinary unanimity on the part of the members of the commission in respect to the changes suggested in their proposed constitution, it is also true that there is not a member of the commission who agrees with every change proposed. Nevertheless, the proposed constitution forms a better basis for discussion by the convention of the constitutional problems in which the people of the state are interested than the existing constitution of the state, because it contains definite suggestions for the solution of a majority of these problems. One may not agree with the great majority of the solutions of modern state constitutional questions suggested, but the great advantage of having the convention direct its attention to the report of the commission, both in the saving of time and in the increased clarity of the issues presented, is evident.

The critical moment in the convention will come when the vote is taken on the motion to go into the committee on the whole to take under consideration the report of the commission section by section. If that vote is adopted, the constitution ultimately drafted by the convention may be a very different document from that suggested by the commission, but Pennsylvania will have set a precedent in state constitution-making which, in the writer's opinion, will do much to preserve respect for the constitutional convention as the method of revising

our state constitutional law, and this because the work of the commission will have made it possible for the convention to do, what has not been done by any state constitutional convention for many decades—draft a short, concise and clear state constitution, which will deal as far as it is advisable for a constitution to deal, with the modern complicated problems of state and local government.

A word as to the character of the constitution recommended by the commission.

The members taken as a whole were not interested in experiments or changes in what may be termed the machinery of government. There is practically little or no sentiment in the state for the initiative, or even for that most conservative of change-blocking devices the referendum. There is no provision for either in the proposed constitution. On the other hand, the members of the commission were interested in removing any obstacle in the present constitution to the development of the material prosperity of the state or the adequate prosecution of public works. Provisions were inserted enabling the state by popular vote to borrow one hundred and fifty million dollars for the construction of roads and twenty-five millions for the purchase and conservation of forest lands. Again, under the present constitution it is impossible in taking land for public improvement to assess the benefits on any land, no matter how much enhanced in value, which does not abut on the improvement. Neither is it possible in making a public improvement to take more land than it is proposed to retain, and resell the excess subject to restrictions protective of the public purpose for which the land is taken. By unanimous vote provisions doing away with these restrictions were adopted. Though the problems of state taxation remain unsolved, and the commission refused to sanction progressive taxation, it has incorporated provisions which if adopted will require the state government to operate under an executive budget system.

Pennsylvania gives more annually to charitable institutions not under the control of the state or municipal governments than is given by all the other states of the United States taken together. Whether such gifts should be indefinitely continued was much debated. A minority of the commission desired to insert a provision to the effect that after 1926 no money should be appropriated for the support of charitable, benevolent or educational institutions not owned and controlled by the state or a municipal government. The majority, however, believed that the system should be continued with radical modifications. The provisions suggested, while doing away with

the existing system of stating in the appropriation act a definite sum to be paid to a designated institution, permits the classification of institutions not under the control of the state, and an appropriation of a lump sum to any one class, the appropriation to be divided among the members of the class in accordance with a plan uniform in its operation as among the members of the class. The plan of distribution among the members of a class is to be set forth in an appropriation act or by an agency created by law, as the department of public welfare.

I have here only given examples of the general character of the substantive changes recommended by the commission. The stylistic changes in the proposed constitution, taken as a whole, form an important part of their work. The constitution of Pennsylvania, drafted in the last part of the eighteenth century, was comparatively short, and from the stylistic point of view well written. Since then the successive additions, while in many cases embodying vitally important and valuable substantive changes, have shown a marked deterioration in style. Long involved sentences, the use of the same words or phrases in different senses, the tendency to deal with new subjects, as local government, in several different parts of the constitution, all unite to increase its length and multiply these problems of construction which can only be determined by extensive and time-consuming litigation.

The commission determined to follow a few simple rules of style: that the same word should not be employed in two different senses; that the same thing should not be designated by one word in one section and by another word in another section; that the same idea should always be expressed by the same combination of words. To adopt these rules in drafting new sections, or sections in which substantive changes were proposed, and fail to revise the language of the remaining sections of the constitution in which as stated there is an entire lack of uniformity in the language used, would do little to decrease existing confusions and uncertainties. To make the use of language uniform throughout the constitution, the commission were therefore obliged to make stylistic changes in sections in which no substantive change is recommended. The result of their painstaking stylistic revision is that the substantive provisions of the proposed constitution are expressed in clear and concise English. Whatever substantive provisions the convention may ultimately embody in the constitution which they will recommend to the people, if they adhere to the "style" of the constitution proposed by the commission there will hereafter be comparatively little litigation to determine what the constitution means. When

we consider the hundreds of thousands of dollars spent on litigation in the United States annually to determine the meaning of constitutional provisions, this in itself, whatever the nature of the substantive provisions of Pennsylvania's new constitution, will be a great gain.

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**The Louisiana Constitutional Convention.** In 1913 a constitution was adopted for the state of Louisiana, which, although superseding the constitution of 1898, nevertheless declared the provisions of that constitution to be in effect unless specifically repealed by or inconsistent with the new instrument.<sup>1</sup> When the supreme court of Louisiana nullified many of the provisions of the constitution of 1913, on the ground that the convention had exceeded its limited powers, there were thus, in effect, two constitutions for the state of Louisiana. Certain provisions of the constitution of 1913 remained valid, while in other matters the constitution of 1898 was restored as the fundamental law.

The confusion and uncertainty thus caused led to immediate agitation for a new constitution, and the legislature of 1915 passed an act calling a convention, which call was, however, rejected on submission to the people. Succeeding legislatures thereupon sought to cure the defects in the fundamental law through amendments, and a total of 31 were submitted and ratified. These seemed merely to add to the confusion, however, the defects being especially serious in the judicial system—some of the courts were behind their docket, some unable to function properly, and some practically idle.

The demand for a new constitution was therefore continued, being pressed especially by the Bar Association and by business and commercial organizations. Governor Parker and his opponent for the nomination in 1919 both made the calling of an unlimited convention one of their principal platform demands, and a call for such a convention, submitted by the legislature of 1920, was approved by a large majority at the polls.

The convention thus called assembled at Baton Rouge March 1, 1921, and adjourned June 18, having been in session 110 days. It was composed of 146 delegates, among them three women. Altho not distinguished by any dominant leadership and not producing any outstanding figure, it would probably average high in personnel, including among its members, for example, two former governors—

<sup>1</sup> Constitution of Louisiana, 1913, Art. 326, Cl. 6, in Kettleborough, *State Constitutions*, 587.

R. G. Pleasant and J. Y. Sanders. No special work of any kind seems to have been done to prepare the members for their work, such as has been done in other states holding recent conventions, and the new Louisiana constitution, altho a creditable instrument, probably reflects that neglect in some degree.

Only three limitations were imposed by the legislature upon the convention of 1921: (1) prohibiting any interference with the debt of the state or any of its subdivisions; (2) prohibiting the shortening of the term of any public officer; (3) prohibiting the removal of the state capital. Acting on the theory that it was a sovereign body with practically unlimited powers, the convention itself, by ordinance, extended the time limit of 75 days imposed by the legislature, and, to meet expenses, ordered a loan of \$100,000, in addition to the legislative appropriation of \$200,000. It also made the new constitution effective July 1, 1921, without submission to the people (this being expressly authorized, however, in the act calling the convention), and called a special 75-day session of the legislature, to meet on the first Tuesday in September.

The constitution thus framed and adopted is very similar to the constitution of 1913. They are almost identical in length, each making up a pamphlet of 127 pages. Both subject matter and language are also practically identical in most respects, the new constitution being, however, somewhat more systematically arranged. The new instrument is also clearly as much subject to criticism as the old in being largely statutory in character rather than basic and fundamental—so much so that during the course of the convention 24 delegates united in a resolution of protest against the making of "a long and cumbersome constitution containing matter legislative in character."

The outstanding features of the new constitution seem to be the reorganization of the judiciary, the provisions for education, the creation of a good roads system, and the revision of the suffrage. The judicial system is thoroughly reorganized; the supreme court is enlarged and permitted to sit in divisions, and given supervisory powers over inferior courts; the terms and salaries are increased throughout the entire system; there is a complete judicial reapportionment, and provision is made for the massing of judges when the burden of work becomes too great for any one of the higher courts; a department of justice is also created, consisting of the attorney-general and two assistants, with supervision and a considerable measure of control over the district attorneys and their work (VII).



With regard to education, unusually liberal provision is made, especially for the university and agricultural college, the entire system (except the university) is centralized under the control of the state board of education, and the state superintendent is made elective by that board (XII).

To provide for the construction and maintenance of hard surface roads, a large highway fund is created by providing for a heavy license tax on motor vehicles (and on other vehicles at the discretion of the legislature) and a tax of two cents per gallon on gasoline (and on other explosives for the generation of motive power, at the discretion of the legislature), all of which is to be expended under the supervision of the board of state engineers (VI, 19).

With regard to the suffrage, the principal feature, in addition to the removal of the sex qualification, is the addition of the "reasonable interpretation" and "understanding" provision of the Mississippi constitution, as well as a "good character" clause (VIII, 1). There is also a stringent anti-bribery clause (VIII, 23), and the legislature is authorized to provide for absentee voting (VIII, 22).

Other features of the new constitution are also of considerable importance. With regard to the legislature, the maximum number of members is reduced, in the house from 120 to 101, in the senate from 41 to 39 (III, 2, 3); the length of the legislative session (60 days) is unchanged, but no bills may be introduced after the first 30 days, except in case of emergency (III, 8); a method is provided by which special sessions may be called, even tho the governor fails to act (V, 14); and the pocket veto is abolished (V, 16). There is also a provision against logrolling (III, 30); and a legislative bureau is created, consisting of the attorney-general and one member from each house, to examine and report "as to construction, duplication, legality, and constitutionality" of all legislative measures, before final passage. (III, 31).

The executive department is constituted as before, except for a few changes in title and functions of some administrative boards, and with the number of independent, constitutional offices actually increased. However, the movement towards reorganization and centralization, begun in other states, has apparently also made some headway in Louisiana, for all the executive and administrative offices (except the governor, lieutenant-governor, treasurer, and secretary of state) are made subject to merger or consolidation by the legislature (III, 32; V, 1).

Other provisions of some importance may be noted: Salaries of public officers are generally increased, and altho fixed in most cases by the constitution, may be changed by a two-thirds vote of the legislature (III, 34); an income tax is provided for (X, 1); the recall may be authorized by the legislature (IX, 9); the legislature is required to provide optional plans for the organization of parish (county) government (XIV, 3); the power of the courts to punish for contempt of court is limited (XIX, 17); alien ownership of land is prohibited (XIX, 21); voluntary arbitration (III, 33), a minimum wage for women and children (IV, 7), and a system of mothers' pensions (XVIII, 5) are authorized. No provision is made for future revision by a convention, and the method of amendment provided is similar to that in the former instrument, except that amendments (just as bills) must be introduced within the first 30 days of the session (XXI, 1). The new constitution is definitely declared to supersede the constitutions of 1898 and 1913, except where otherwise specifically provided (XXII, 1, cl. 7).

It is difficult to make any estimate at this time of the Louisiana convention of 1921, or of the instrument framed by it. Certainly the defects in the new constitution are many, not the least of which is the fact that it is to a considerable extent statutory rather than organic in its character. Neither does it fulfill the expectations of those who had hoped for a progressive and forward-looking instrument. Ex-Governor Pleasant, for example, refused to sign the new constitution because he claimed it had been in part dictated by special interests.<sup>2</sup> At least one other delegate likewise refused to sign. On the other hand, Governor Parker, whom progressives have delighted to honor, warmly endorsed the work of the convention as "generally patriotic and thorough, as well as efficient," and characterized the constitution as not perfect, but one that would confer material benefits on the people.<sup>3</sup> The public opinion of Louisiana seems, in general, to reflect this view.

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**The New Civil Administrative Code of Washington.** In 1917 the legislature of Illinois, upon the recommendation of Governor Lowden, enacted a civil administrative code, which has attracted nation-wide attention. Such has been the success of this code that a number of states have enacted similar codes. Among these states is Washington.

<sup>2</sup> Statement in *New Orleans Times-Picayune*, June 19, 1921.

<sup>3</sup> *Ibid.*

Governor Lowden in his inaugural address in 1917 pointed out the lack of unity, the lack of systematic organization and of responsibility of the state government of Illinois, with its large number of boards, commissions, and officers. He pointed out the need of consolidation and of centralization. Said Governor Lowden: "Under the present system of confusion and perplexity, the governor cannot exercise the supervision and control which the people have a right to demand."

A like condition of affairs prevailed in the government of the State of Washington. To Governor Louis F. Hart belongs the chief credit for the enactment of a code on the main lines of that of Illinois and of Nebraska. Upon Governor Hart's suggestion the special session of the legislature of 1920 authorized him to have such a code drawn to be presented to the regular session of 1921. In the preparation of this code Governor Hart had the assistance of Attorney-General L. L. Thompson, of L. D. McArdle, known for his intimate knowledge of our state government, and of Hon. Charles Gleason, an expert draftsman and attorney of Seattle. This code after consideration by the legislature was enacted into law, with slight change.

The Civil Administrative Code is entitled, "An act relating to, and to promote efficiency, order and economy in, the administration of the government of the state, prescribing the powers and duties of certain officers and departments, defining offenses and fixing penalties, abolishing certain offices, and repealing conflicting acts and parts of acts."

The act creates ten departments of the state government and over each department there is a chief executive officer known as a director. The ten departments are as follows: public works, business control, efficiency, taxation and examination, health, conservation and development, labor and industries, agriculture, licenses, fisheries and game. Each director is nominated by the governor and confirmed by the senate.

The act also creates nine administrative committees of three members each and composed of the elective state officers. These nine committees are: state equalization, state finance, state highway, state capitol, state archives, state parks, state voting machine, state law library, state library.

The governor and the ten appointed directors are to constitute the administrative board. The governor is the chairman. In popular language this board is called the governor's cabinet. The act gives it the power to adopt general rules for the transaction of business of

the board. A majority of those present at any meeting of the board is given the power to determine and advise as to questions of policy in the administration of any of the departments of the state government created by this act. It is made the duty of the board to systematize and unify the duties of the various departments of the state government created by this act; to classify subordinate offices, departments and institutions; to determine the salaries and compensation of subordinate officers and employees; to authorize in cases of emergency, any institution, state officer or department of the state government to incur liabilities to carry on their work until the meeting of the legislature.

Each office created by this act became established on the first day of April. The salaries of the directors are to be fixed by the governor. Each director is given power to make rules for his own department not inconsistent with state law. Each department is to maintain its principal office at the state capital, but branch offices may be established at other points in the state. While the governor is to nominate each director, the director names his own chief assistants, and these assistants select their own subordinates.

The first department named in the act is that of public works, with three divisions, as follows: (1) The division of transportation, whose head is to be known as the supervisor of transportation; (2) the division of public utilities at the head of which is the supervisor of public utilities; (3) the division of highways at the head of which is the supervisor of highways. The act requires the latter to be an experienced constructing highway engineer. Through the division of transportation the director of public works is to exercise the powers and perform the duties relating to common carriers of freight or passengers now performed by the public service commission. Through the division of public utilities the director of public works is to exercise the powers heretofore performed by the public service commission relating to grain inspection, bridges, public utilities, and many other lines. The director of public works and the supervisors of transportation and of public utilities are jointly to hear and decide all matters deemed of sufficient importance to require their joint action. An appeal from any such joint decision may be made to any court of competent jurisdiction. The director of public works is also to exercise the powers heretofore performed by the state highway commissioner.

The second department named is that of business control, with five divisions, at the head of each of which there is an assistant director.

These five divisions are as follows: Division of administration; division of purchasing, the assistant director of which is called the supervisor of purchasing and who must be a citizen of this state and have had practical experience in commercial pursuits; the division of farm management whose duty it is to make a survey of the lands connected with the state institutions and to determine which is best suited for agricultural, horticultural dairying and stock raising purposes, and to establish and carry on suitable farming at the several institutions and to supply the state institutions with the food products produced on the state lands; division of industrial management, whose duty it is to operate at the several state institutions such industries and industrial plants as may be most suitable and beneficial to the inmates thereof and can be operated at the least relative cost and the greatest relative benefit to the state, to supply the several institutions with the necessary industrial products produced thereat, to exchange with or furnish to other state institutions industrial products at the cost of production; division of public buildings and grounds, whose duty it is to prepare topographical and architectural plans for the state institutions under the control of the department and for the state capitol buildings where not already prepared, to prepare plans for all necessary repairs of state buildings and to supervise the erection, repair, and betterment of all such state buildings.

The director of business control is given authority to select from the faculty of the university or the state college of Washington a state dietitian, to advise the department as to the quantity, comparative cost, and food values, of proper diets for the inmates of the state institutions under the control of the department. The division of purchasing is authorized by this act to purchase all the supplies for the support and maintenance of the state institutions. It is through this division that the friends of the Civil Administrative Code believe that the code will make the greatest saving to the taxpayers of the state through skillful buying, discounts, purchases in large quantities and in various other ways. The director of this department is given the power to establish at the state capital a warehouse or storeroom for the storage and distribution of supplies purchased for the elective state officers, the supreme court, and the administrative and other departments of the state government located at the state capital.

The duties of the third department, that of efficiency, may be summarized as follows: The inspection of all public offices of the state and all state educational, penal, benevolent and reformatory institutions

and all offices, departments and agencies of state government which heretofore have been under the supervision of the state auditor, bureau of inspection and supervision of public offices. (2) To make efficiency surveys of all the state departments and institutions and of the business methods pursued therein. (3) To make confidential reports to the governor of the workings, especially financial, of all the state institutions. (4) To prepare the biennial statement of each department as the basis for the state budget. (5) To prepare and recommend to the administrative board a system of classification, salaries, and compensation for all subordinate officers and employees of the state offices, departments and institutions other than educational institutions.

The fourth department, that of taxation and examination, is to consist of three divisions, taxation, banking, and municipal corporations. At the head of each division is a supervisor who has authority to appoint the necessary assistants. Through the division of taxation the director is authorized to perform the duties heretofore performed by the state tax commissioner, and to make a record of all classes of property, real, personal, and mixed, tangible and intangible, throughout the state. Through the division of banking, the director of taxation is authorized to take over the duties of the bank commissioner and the supervision of building and loan associations heretofore performed by the state auditor. Through the division of municipal corporations, the director of taxation is authorized to inspect the public offices of counties, cities, towns, townships, taxing and assessing districts and other municipal corporations.

The director of health is required to be an experienced physician. He with four other persons appointed by the governor constitute the state board of health. The secretary of this board is to be the state registrar of vital statistics. The director is authorized to appoint the necessary deputies, experts, sanitary engineers, quarantine officers and local registrars. It is made the duty of the director of health at least once each six months to inspect each of the state institutions from the standpoint of sanitary and health conditions, and to require the governing authority of each institution to make any changes desired. In addition to the state board of health, the Civil Administrative Code creates an institutional board of health composed of the director of health and the head physicians of the woman's industrial home, the state custodial school and of the three state hospitals for the insane, and one woman physician to be appointed by the governor. It is the duty of this board to visit each state institution represented on the board and

advise the superintendent thereof regarding the general care and treatment of inmates, and to provide a proper diet for the various classes of inmates of such state institutions. As the duties of this board are merely advisory, the superintendent of each institution is not compelled by the act to carry out the suggestions of the board.

The sixth department is that of conservation and development, with five divisions, each with a supervisor at the head: forestry, geology, reclamation, Columbia Basin survey, hydraulics. The director of conservation takes over the work of the former state board of state forest commissioners and of the state forester. He takes over from the governor the powers relating to the suspension of the open season for shooting game. The division of geology takes over the duties heretofore performed by the board of geological survey and the duties of the state geologist. The division of reclamation takes over the duties of the former state reclamation board.

The seventh department is that of labor and industries, with three divisions: industrial insurance, safety, and industrial relations, each with a supervisor at its head. The supervisor of the division of industrial relations has the power to appoint a female assistant to be known as the supervisor of women in industry. The division of industrial insurance takes over the duties heretofore performed by the industrial insurance department, the state medical aid board, the local aid boards. Questions requiring joint action are decided by the director of labor, the supervisor of industrial insurance and the supervisor of safety. The division of safety takes over the duties of the state safety board, and the inspection duties heretofore performed by the commissioner of labor, the state mine inspectors, and the former public service commission, the making of rules for the use and the construction of electrical apparatus heretofore performed by the public service commission, the duties formerly belonging to the inspector of hotels and the bureau of labor. The division of industrial relations is charged with the settlement of industrial disputes. It must keep in touch with problems of industrial relations and make recommendations to the legislature. It must do the statistical work formerly done by the secretary of state, make special investigations and supervise all laws relating to the employment of women and minors, with the assistance of the supervisor of women in industry. The director of this department, the three supervisors and the supervisor of women in industry, are constituted a committee to take over the work formerly done by the industrial welfare commission, which was chiefly to

enforce the minimum wage law for women. Owing to a controversy arising in 1920 between the employees and the employers the work of this department has been at a standstill for about a year. It is shortly to be resumed.

The eighth department is that of agriculture, with the following divisions: agriculture, horticulture, dairy and livestock, foods, feeds, drugs and oils, weights and measures. Each of the five divisions has a supervisor appointed by the director of the department. The director of agriculture supersedes the former commissioner of agriculture. The duties of each of the five divisions are fairly well indicated by their names. The new code transfers the fifth division or weights and measures from the office of secretary of state to the director of agriculture.

The ninth department is that of licenses. It has no subdivisions, but the director is authorized to appoint the necessary assistants. The director is authorized to perform the duties formerly exercised by the following state boards: accountancy, architects' examiners, barbers, chiropody, chiropractic, dental, drugless, embalmers', medical, mining, nurses, optometry, osteopathy, pharmacy, veterinary; except the receiving of fees. The times and places for holding examinations are fixed by the director of licenses, as well as the establishing of general rules, prescribing the methods of conducting such examinations. It is made the duty of the governor at the request of the director of licenses to appoint three persons to conduct the examinations of the applicants to practice the various professions and callings for which licenses are required. Instead of paying the fees to these various licensing committees the fee is to be paid directly to the treasurer of the state. This principle runs throughout the Civil Administrative Code. The law makes it the duty of the secretary of the department of licenses to notify the holders of licenses of the expiration of such license thirty days before the expiration thereof. Licenses may be revoked by the director and two persons appointed by the governor. Among the powers of the director of licenses are the issuance of licenses heretofore issued by the fish commissioner, licenses relating to breeding and selling of wild animals and birds, licenses to itinerant peddlers, licenses to aliens to carry firearms, licenses to corporations, motor vehicle licenses, licenses to electrical experts. An appeal from any decision as to licenses may be taken to the superior court of Thurston county.

The tenth department is that of fisheries and game, with two divisions: fisheries, and game and game fish. Each of these has a super-



visor. In addition the governor is authorized to appoint a board of three men having a general knowledge of fish and fisheries of the waters of Washington and the adjacent states to constitute the state fisheries board. This board is authorized from time to time to make, adopt, amend, and promulgate rules governing the taking of food fishes. Section 111 of the code repeals as statutes all laws referred to in the preceding sentence, but makes them operative until amended or repealed by the state fisheries board. This section was among those most bitterly attacked during the course of the passage of the bill. Any person violating any rules of the state fisheries board is guilty of a gross misdemeanor. To be eligible to appointment as supervisor of fisheries a practical knowledge of propagation of fish is made necessary. The same rule is to apply to the supervisor of game and gamefish. Since fishing is one of the large industries of Washington, especially of Columbia River and the Puget Sound regions, the sections of the law relating to this department were very carefully watched and bitterly contested while the bill was on its passage.

In case of the absence or disability of the director of any department, he is authorized to designate one of the assistant directors to act, and in case of a vacancy to act until the governor fills the vacancy. The state tax commissioner having been abolished, the duties heretofore devolving upon him in relation to inheritance tax and escheats are to be performed by the attorney-general.

All officers whose duties are abolished by this act are to continue to perform the same until removed or transferred to some other department. Any question or business which has been taken up by any officer previous to April 1, will be continued and attended to by the department in which it would properly fall. Any order, rule or regulation previously enforced is to continue until revoked by the proper department. All existing contracts and obligations of any existing department of the state government are to remain in full force and effect and to be observed by the proper departments under the new code. All reports required to be made under the existing law, are required to be made by the proper department under the new code.

The last section, number 138, declares an emergency and that the act should take effect immediately upon its passage, since the revenues of the state were insufficient to support the state government and its existing public institutions as at present organized, and as it was desired to bring the cost of supporting the state government within the possible

revenues of the state. April 1 was set as the day for the actual going into operation of the new code. This emergency declaration has been sustained by the supreme court of Washington.

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**Administrative Consolidation in California.**<sup>1</sup> California's administrative reorganization began in 1919, when the department of agriculture was established to take over the work of eight separate offices. Further consolidation has now been secured by a group of bills which were passed by the legislature this year, going into effect July 30. Seventy-five boards, commissions, and officers have been consolidated into seven departments, each made up of divisions performing similar or related functions. These divisions represent, largely, the formerly unrelated agencies of state government in California.

The head of each department or the board administering the same, is appointed by the governor and is given, subject to the approval of the chief executive, complete power to appoint all division chiefs and assistants, and to organize or reorganize the work of the department or create additional divisions as may be necessary. In this way both flexibility of arrangement and concentration of authority are secured.

The salaries of the heads of departments and divisions created by the act, are specified in the laws. The highest sum paid to any one officer in the seven departments is \$10,000 to the director of public works. The heads of the departments of agriculture and finance receive \$5,000, as do the chiefs of important divisions in these same departments. The civil service director is paid \$4,000. A few of the division chiefs in other departments receive the same amount, but all other salaries stated in the law are below this level.

The seven executive agencies and the department heads are:

1. Department of Civil Service, under a director, and two associate commissioners.
2. Department of Finance, under the board of control.
3. Department of Labor and Industrial Relations, under a departmental council.
4. Department of Public Works, under a director.
5. Department of Institutions, under a director.

<sup>1</sup> Cf. James R. Douglas, *The Research Activities of Departments of the State Government of California in Relation to the Movement for Reorganization*. Bulletin of the National Research Council, II, pt. 5, June, 1921.

6. Department of Education, under a director.

7. Department of Agriculture, under a director.

In the department of agriculture, no change was made this year, except in the addition of two new functions, and when codified this department will take its proper place in the code with the other departments. The administration of the civil service law remains practically the same, except that one of the three commissioners in charge of the department devotes his entire time to the work and receives a larger salary than formerly, while the other two are merely associates on a per diem basis.

Similarly, in finance, little actual change has been made, but to increase the powers exercised by the board of control, which is continued under the new law and constituted the governing body of the department of finance. Its three members are the heads, respectively, of the divisions of claims and disbursements, budgets and accounts, purchase and custody. Preparation of the budget lies with the member in charge of that division, but in final determination the board will act as a whole. Certain miscellaneous offices are also included in this department under division chiefs appointed by the board of control.

In the department of labor and industry there is no reorganization, merely coördination. Four agencies, the industrial accident commission, the commission of immigration and housing, the industrial welfare commission and the bureau of labor statistics, are combined into one department. The existing boards are continued, each as a division of the department, and each appoints a representative to the departmental council created for the purpose of eliminating conflict of authority and duplication of activity. The law further provides that the department shall submit to the governor and legislature, prior to its next session, a plan for complete reorganization of the activities of the present divisions of the department.

Each of the departments of public works, institutions, and education, is, like the department of agriculture, placed under a director. Most of the existing boards are continued in an advisory capacity, and constitutional offices which could not be abolished by statute, are brought into the scheme by consolidating new positions with old. For instance, the state superintendent of public instruction, an elected officer, is ex-officio director of the department of education and the state board of education is placed in charge of the division of text-books. Within these departments are appropriate divisions, some under single exec-

utive officers, others under commissions. The internal organization of the seven departments varies somewhat, according to the functions to be performed and also according to the number of old employees who must find their places under the so-called reorganization plan.

The new laws provide a scheme of government which makes an excellent organization chart, but one which cannot be counted upon greatly to relieve the present grievous pressure on the pocket books of burdened taxpayers. It does not abolish existing offices, of which there are far too many, but merely effects a union in the departments concerned which will doubtless tend to promote efficiency in service. A great many of the state's activities, including the regulation of public utilities and corporations and the supervision of banks, insurance companies, and building and loan societies are not touched by the legislation of this year.

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What was done in California in 1921 amounted to little more than a somewhat elaborate attempt to seem to do something without doing it. So far as they go, the changes are in the right direction, but they cover only a few services and make no drastic changes as to these. A situation which demanded a radical operation has been treated with a poultice. The following statements may properly be made as to the reorganization of 1921:

1. The changes in the administration of the civil service amount only to making one of the commissioners a full salaried executive head.

2. The so-called department of labor and industrial relations is not a department at all, but merely a formal association of certain existing authorities.

3. Most of the important functions of the department of public works were formerly under the direction of the state engineer, so that the change effected in this field is more verbal than real.

4. The department of education is a make-shift arrangement centering on an elected officer.

5. The department of agriculture had already been established in 1919.

6. The reorganization effected in the matter of finance amounts to little else than more precise definition and formal legal recognition of powers already exercised by the board of control.

7. The only real consolidation effected is in the department of institutions.

It is to be hoped that this petty tinkering will not be allowed to delay genuine reform.

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**State Reorganization in Michigan.** Michigan has recently undergone a make-shift state reorganization, in an effort to untangle a government whose complications were only equaled by some of the southern commonwealths.

Michigan government has been inexpensive until recent times, but has also been ineffective. It is reported that the previous organization has consisted of more than 116 distinct governmental units, which, with the use of ex-officio boards and the dissipation of authority over similar services, has scattered responsibility and made action impossible. For example, responsibility and authority for dealing with state financial problems has been distributed among every state official and board, except the lieutenant governor. Problems relating to trade and commerce have been divided among thirteen authorities. Education and related questions have been dealt with by five elective officials and boards and twenty-seven other authorities. Welfare activities were distributed among at least thirty officials.

In consequence, practically every elective official was a member of numerous ex-officio boards, in the operations of which he could take no active part. The state superintendent of public instruction, primarily responsible for the supervision of the public schools of Michigan, and a member of numerous educational boards, was also a member of the board of geological survey, the war preparedness board, the board of state auditors, the board of state canvassers, the office building board, public domain commission, the board of fund commissioners, the board of escheats, the board of control of state swamp lands, the board of claims of public land sales, and the state board of agriculture.

This situation was well understood by persons interested in government, and in 1920 the Michigan Community Council Commission, through the Institute for Public Service of New York City, presented a 200 page report dealing with Michigan's government and making tentative recommendations for reorganization. The newly elected governor, Mr. Alex J. Groesbeck, was fully aware of the shortcomings

of the state government and had in mind a reorganization program of his own. For this reason the program of the Community Council mission was not specifically urged, in a desire not to embarrass the governor's proposals.

There is every reason to believe that the governor went into with the intention of bringing about a thorough reorganization. There was no announced program, but several measures were introduced with rumor of additional bills to follow.

After a time political opposition reached a point where apparently it seemed unwise to make further suggestions and the program discontinued in an unfinished state.

The results of legislation secured are the creation of a state administrative board to have general supervision of all state activities, creation of five large departments to assume the duties formerly performed by thirty-three ex-officio boards or semi-independent official state administrative boards. The state administrative board correlates the activities of the governor, the secretary of state, the state treasurer, the auditor general, the attorney-general, highway commissioner, and the superintendent of public instruction. This board has large supervisory powers over the activities of all other state departments. However, the governor retains appointive power over all principal subordinates, and retains veto powers over the acts of the board. It has been suggested that a constitutional amendment would be submitted providing for the abolition of a number of these elected officials, and for their appointment by the governor. If such intention ever existed, it was carried out and this administrative board remains as a compromise of the short ballot principle. There are evidences, however, that the board has accomplished results. It is reported that they have a large authority over public expenditures, have investigated the activities of state departments, and discontinued a number of unnecessary positions.

The five departments created include the department of agriculture under a single commissioner; the department of conservation under a seven member board and a single commissioner; the department of labor, with three salaried commissioners; the department of public safety, with a single commissioner; and a department of welfare under one commissioner and a seventeen member board. There is a certain skepticism as to whether the anomalous situation as between salaried boards and salaried commissioners, as provided in the department of conservation and the department of welfare, will operate

cessfully, especially as the non-salaried members and the salaried commissioners receive their appointment from the same source, the governor. Under these circumstances, it is questionable how far one may be critical of the other.

The department of public welfare, which assumes the duties of the state board of correction and charities, also has supervision over seventeen state institutions. However, these institutions are divided into four groups, each in immediate charge of a non-salaried board. These groups have charge of hospitals, prisons, the industrial schools, and the schools for educating the handicapped. In the recent past there have been biennial exposures of mal-administration in some of these institutions, ranging from financial defalcations to cruelty to inmates. If a single cause could be attached to these periodic criticisms, it would be that the members of the board of trustees living away from the institutions, and engaged in their own affairs, have not given proper care to the activities of the institutions. How far will this difficulty be obviated when, instead of a single institution, these boards have from three to seven institutions to supervise? How far can a single board commissioner detect mal-administration in a group of seventeen institutions? If mal-administration is detected, what corrective measures can be applied, when immediate responsibility lies with the board receiving their appointment from the governor?

A chart of state government under its reorganization indicates that there will remain sixteen ex-officio or semi ex-officio boards with considerable power, seven state departments, in addition to the five principal departments created, eleven examining boards, three centers of educational authority, and eight boards having control over important state activities. The thirty-three other departments have been merged into the five large departments created. But now in place of a single line of authority running from the governor to the appointee, there runs a double line of authority, that of appointment from the governor, and that of supervision from the new state board of administration.

The experience of the state administrative board as a means of correlating the authority of elected officials may be of interest to the student in government. The other efforts at state reorganization are hardly worth consideration.

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**The Illinois Legislative Session of 1921.** The session of the Fifty-second General Assembly of Illinois which ended in June was memorable mainly for its meteoric finish, in which the legislature was aroused from a state of docile obedience to political bosses to unexpected assertion of its independence and self-respect. After suffering themselves to be controlled for five months by the state organization, many legislators became deeply disgusted with the objectionable methods of the organization leaders and rebelled with such effect that the most cherished administration measures failed of enactment.

Through the united efforts of Fred Lundin, former lieutenant of Lorimer; Mayor William Hale Thompson of Chicago, his political protegee; and Len Small, governor of Illinois by virtue of his alliance with these two, one of their adherents was made speaker of the house at the beginning of the session and a safe margin of control was established in both branches. These results were accomplished partly by utilizing the good will many reputable down-state Republican members naturally felt for a newly elected Republican governor; and partly, it is alleged, by the lavish use of state patronage. Such administration measures as were brought to an early vote were passed through both houses with little difficulty.

Among these was a joint resolution calling upon the President and Congress to put into effect "policies" advocated by Mayor Thompson and Governor Small during the last state campaign and subsequently set forth in the governor's inaugural message. These included opposition to compulsory military service or conscription and favored the exemption of incomes less than \$5000 per annum from taxation. Although members argued strenuously against these doctrines on the ground that they were calculated to stir up class hatred and to render the nation defenseless in time of war, the resolution was put through both houses. This action in requiring legislators, as a test of "loyalty to the governor," to vote for distasteful proposals, helped bring about revolt two months later.

Early in March legislative business was so far advanced that Speaker Dahlberg and other legislative leaders prophesied that final adjournment would take place not later than May 15. This prediction was based partly on the fact that the work of framing the appropriation bills had been greatly expedited by the preparation of a complete state budget under the direction of Omar H. Wright, director of finance under Governor Lowden, before the session began; and partly on the



expectation that the bills included in the legislative program of the state administration would be promptly introduced and acted upon.

Instead, the organization leaders delayed the introduction of most of their important measures until May or June, and in the meantime the legislature did little more than mark time. Gradually the impression gained ground that the presentation of those measures was being intentionally delayed until the closing days of the session, seemingly for the purpose of preventing some of them from receiving adequate consideration. Action on many other bills was also delayed apparently in order that members who desired their passage might be forced to support the administration measures. Even the great omnibus appropriation bill, carrying appropriations of more than \$40,000,000 for the ordinary and contingent expenses of the state government, was not introduced until June 8, obviously with a view to preventing proper scrutiny of its multitude of items. So that instead of adjourning early in May with its calendars cleared, as had been predicted, the general assembly found itself in June facing the worst jam in the legislative history of the state.

Even with almost continuous work day and night during its closing week the legislature was physically unable to give proper consideration to measures of importance to all the people of the state. The extent of this legislative congestion is indicated by the fact that on June 18, its last legislative day, the general assembly passed more than 200 bills, grinding out legislation without consideration in a continuous succession of roll-calls. Of the 361 bills which passed both houses during the entire session, 315 were given final passage during its last 72 hours. In bringing about this situation, which tended strongly to defeat the purposes for which legislative sessions are held, the state administration and its allies were guilty of a most serious offense against the public welfare.

Two weeks before the end of the session the Lundin-Thompson-Small combination launched an intensive campaign to bring about the enactment of four measures which were the principal remaining features of their program. All of these had been introduced late in the session. They were:

1. The tax commission bill (Senate Bill 472) amending the 1919 act regarding the assessment of property so as to give the state tax commission complete control over all local assessors and full authority to re-assess property, such re-assessment not to be subject to revision by boards of review. It also increased the membership of the tax commission from three to five.

This bill was bitterly opposed on the ground that the proposed power of reassessment was liable to gross abuse as a political weapon; and that the proposed increase in the number of the commission was merely for the purpose of creating high salaried jobs for the state administration to dispense.

2. Mayor Thompson's Chicago traction measure (House Bill 816) providing for the creation of transportation district in contiguous territory wholly within one county, to be directed by a board of elective trustees, vested with authority to acquire street railways by purchase, lease or condemnation and to operate them. The bill expressly limited the rate of fare to five cents, unless another rate should be authorized by a popular vote.

This measure was widely regarded as an extremely doubtful experiment in legislation, presented for the purpose of enabling Mayor Thompson to go through the motions of fulfilling his campaign promise that he would bring about "people's ownership" of the Chicago car lines. It was pointed out that municipal operation of street railways under such tutelage would be likely to lead to utilization of the thousands of street railway employees as an active political force for the purpose of strengthening the machine's control of Chicago and of the state.

3. Governor Small's pet measure (Senate Bill 531) to amend the Civil Service Act so as to remove nearly 2000 state employees, including all employees of the department of public works and buildings and the department of agriculture, from the protection of that law. Friends of the governor who were spokesmen for this bill made no secret of the fact that it was intended as a death-blow to the merit system in the state service. In a special message urging support of the bill Governor Small himself attacked the state civil service system as impracticable.

4. The prohibition commissioner bill (Senate Bill 500) creating a prohibition enforcement department apart from the attorney-general's office. Enactment of the bill would have allowed the governor to appoint a state prohibition commissioner, two deputy commissioners and twenty-five investigators, all of which positions were expressly exempted from the civil service law. This bill was attacked as a spoils proposition, by which the state administration aimed to gain extensive new patronage and to control the expenditure of a large appropriation for enforcing the prohibition law.

About June 6 Mayor Thompson arrived in Springfield accompanied by Lundin and by Dr. John Dill Robertson, health commissioner of Chicago. Their coming was ostentatiously heralded, and in cooperation

with the governor they began a systematic canvass of the members of the house and senate for the purpose of passing their favored measures, making their headquarters in the governor's office and in the speaker's room. The mayor and his chief political associates called in the legislators one by one and sought to line them up for the bills above mentioned. At the same time every other available influence was brought to bear upon the doubtful members of both branches. State officials appointed by the governor and their office employees became feverishly active, and lobbying was carried on with such persistence that it interfered seriously with legislative work and became a constant nuisance. Time and again members of the house called the attention of the speaker to the fact that prominent aides of the governor were openly violating the rules by lobbying on the floor while the house was in session. Even when the business of the house was stopped in order that they might be driven from the floor the jobholding lobbyists lost little time in returning to invite ejection again.

Reports became prevalent that state patronage was being freely promised in the effort to win votes and that members were being given to understand that the fate of their measures depended upon whether they "went along" with the administration program.

The four administration measures were given the right-of-way in both the house and senate and were rapidly advanced. The anti-civil service bill, introduced by Senator Wheeler on June 7, was passed by the senate a week later. Its consideration on second reading in the house on June 16 precipitated one of the most tense and stormy scenes ever witnessed at Springfield.

Representative John A. MacNeil of Olney, a Democratic member of high standing, took the floor and angrily related how he had been offered a favorable decision in a case then pending before the public utilities commission, through a well-known state employee whom he named, if he would vote for the tax commission and anti-civil service bills. Mr. MacNeil's indignant and dramatic speech was listened to with the closest attention by every member of the house, several of whom, including Representatives Snell, Searcy, Barbour and Kauffman, related somewhat similar experiences in support of Mr. MacNeil's charge that improper and unlawful methods were being used to pass those bills. The better element in the house was deeply impressed by these statements, and a motion to strike out the enacting clause of the anti-civil service bill was barely defeated by a vote of 72 to 70.

The Legislative Voters League of Illinois, which reports periodically on the record of each legislator, considered that the state administration's assault on the civil service system and the methods used to pass the bill constituted a challenge to the decent citizenship of the state. It therefore issued a warning statement on June 17, signed by its executive officers, which it placed in the hands of each member.

When the anti-civil service bill was called for passage late on the night of June 18, Representative Holaday of Danville, the administration floor leader, attacked the Legislative Voters League on the ground that its statement had been issued with a view to "dominating" the general assembly. This attack was answered effectively by Representative Castle of Barrington. Both the state administration and its Cook County allies exerted themselves desperately to pass the bill but it was decisively defeated, receiving only 66 votes on the roll-call, ten less than the required constitutional majority.

At Governor Small's request Representative MacNeil put his charges in writing and the governor sent a special message to the legislature before the vote was taken in the house on the anti-civil service bill or on the tax commission bill, disavowing any responsibility for attempts to influence votes by unlawful means and promising a full investigation. At the same time the resignation was announced of the state employee named by Representative MacNeil and other members.

On the day following the MacNeil expose the tax commission bill, which had been passed by the senate on June 8, was called up on third reading in the house, after the Democratic members of the house revenue committee had secured an unfavorable report. Representative Holaday moved non-concurrence in the committee report and Representative Baker offered a substitute motion that the house concur in the report of the committee. On a roll-call Mr. Baker's motion was carried by a vote of 99 to 45, and the bill was killed.

The lengthy and complex Chicago traction bill, which had been introduced on May 18 and had been reported favorably by the house committee on public utilities and transportation on the same day, easily passed the house on June 9 by a vote of 87 to 31, but when it was called up for passage in the senate on June 18 its supporters could muster only 22 votes for it, four less than the constitutional majority required to pass a bill in that body. Eighteen senators voted against the bill and seven were recorded as "present." The prohibition commissioner bill was also defeated in the senate on June 17, by a vote of 29 to 15. Immediately following the defeat of these principal

administration measures Governor Small announced that he would call a special session of the general assembly in November to reconsider the transportation district and tax commission bills.

As Governor Small made no public report on his investigation of the charges preferred by Representative MacNeil and others, and as the state employee whose name was mentioned in those charges was given official promotion with an increase in salary by the governor soon after the legislature adjourned, the Legislative Voters League on July 7 called the above-mentioned charges to the attention of Attorney-General Brundage, as the chief law officer of the State, with the suggestion that they be presented to the July grand jury of Sangamon County for full investigation.

Early in July that grand jury returned indictments at Springfield against Governor Small and Lieutenant Governor Fred E. Sterling, charging embezzlement and conspiracy to defraud the state of interest-earnings on state moneys which came into their hands while serving as state treasurer, which office both men had held. Investigation of this sensational matter so occupied the grand jury's time that it was unable to take up the MacNeil charges.

Among the measures enacted during the session which had the backing of the organization were the following: Public Utilities—This act nominally repeals the public utility law of 1919 and abolishes the public utility commission appointed by Governor Lowden, but re-enacts most of the old statute and changes the name of the board to the Illinois commerce commission; it increases the membership of the commission from five to seven and authorizes the appointment of eight assistant commissioners; it has "home rule" features under which a municipality desiring to regulate its local utilities may take over such regulation, if such action is approved on a referendum vote initiated by a petition signed by twenty-five per cent of the number voting at the last city election. This so-called "home rule" feature is weakened by a provision that a public utility may appeal to the state commission from an order of the city council. The bill expressly provides that officers and employees of the Illinois commerce commission (about 150 in number) shall not be included in the classified civil service of the state.

Sanitary District Salary Raise—This measure increases annual salaries of the trustees of the Sanitary District of Chicago from \$5000 to \$7500; vests the election of the president in the board instead of the people; and requires the sanitary district to use some other effective method of sewage treatment besides dilution.

**State Highways**—This act establishes a system of state highways and gives the department of public works and buildings full control of road construction and maintenance; and expressly exempts about 450 employees from the operation of the state civil service law.

**Primary Law**—This changes the date of the primaries for the nomination of candidates for county, state and legislative offices from September to April, supposedly for factional advantage.

**Tax Rates Increased**—By this measure authority is granted for increasing the tax rates of the city of Chicago, the county of Cook, the Sanitary District of Chicago, the Forest Preserve District, the park districts and for educational purposes. By reason of these changes it is estimated that taxes in Chicago will be forty per cent higher next year.

**State Salary Increases**—Raises in salary were given to state officers and employees, including nineteen whose offices were created by the state Administrative Code and who hold office, under that act, for a definite term of four years. A suit has been filed to test the validity of this measure, on the ground that it violates the constitutional prohibition against increasing or diminishing the salary of a public officer during the term for which he was appointed.

Administration bills that failed of enactment included the following:

A bill to empower the Chicago board of education to sell school lands without obtaining the sanction of the city council. This attempt to abolish a reasonable safeguard against possible private sale of enormously valuable school properties aroused such a storm of public protest that the bill, after having passed the house without due consideration, was killed in the senate committee on education.

A bill which provided for the appointment by the governor of a health commissioner for each of the 102 counties of the state, each health commissioner to receive a salary equal to that paid to the state's attorney of the county. This bill was regarded as one of the most objectionable patronage schemes of the session. It would have afforded the means of vastly strengthening the organization throughout the state and was especially championed by Health Commissioner Robertson of Chicago. It passed the senate, but died in the house committee.

Additional legislation placed on the statute books during the session includes the following:

The Soldier's Bonus act authorizes a bond issue of \$55,000,000 to provide compensation at the rate of fifty cents a day for residents of Illinois who served honorably with the military and naval forces of

the United States for at least two months during the World War, prior to November 11, 1918, said compensation not to exceed \$300; the proposed bond issue to be submitted to a referendum vote in November, 1922.

An enabling act for comprehensive zoning in cities and incorporated towns revises the law of 1919, provides that no zoning ordinance shall be passed until a report is made by a zoning commission appointed by the mayor with approval of the city council, and provides for a board of appeals to hear complaints and recommend changes in zoning provisions.

The balance of the 1919 appropriation for expenses of the constitutional convention, amounting to \$180,000, was reappropriated. The school distributive fund was increased from \$6,000,000 to \$8,000 000 per annum. The University of Illinois appropriation was increased from \$2,500,000 per year to \$4,462,500 per year.

An educational commission was created, with an appropriation of \$25,000, for the purpose of standardizing and unifying the educational system of the state, to investigate inequalities in taxation for school purposes, the comparative needs of elementary and higher education, the functions of the normal schools, and the practicability of placing the higher state institutions of learning under a single controlling body.

Provision was made for admitting to state charitable institutions the children of service men in indigent circumstances, also for giving such children a high school education at state expense.

An act requiring that not less than one hour of each school week be devoted to the study of the principles of representative government; this requirement to apply to the seventh and eighth grammar grades and to the high school grades in all schools supported wholly or in part by public funds.

Laws governing election contests were amended so as to provide a method for contesting the result of the vote on a bond issue or other proposition in cities, towns and villages; and also on a constitutional amendment or other public measure submitted to the voters of the entire state. Women were placed on the same basis with men as to registration and method of voting.

A joint commission composed of members of both houses was authorized to continue the inquiry into the causes of excessive costs of building in Chicago, begun by a joint committee headed by Senator Dailey which was appointed early in the session and which accomplished highly important results, including the indictment of a large number of persons for alleged connection with conspiracies in restraint of trade.

The commission was given an appropriation of \$50,000 to carry on its work.

Four bills were passed to ameliorate conditions imposed on renters of dwellings and apartments by the housing shortage.

A deep waterway commission was authorized, with an appropriation of \$20,000, to investigate the practicability of a proposed water route to connect the Great Lakes with the Atlantic Ocean, by way of the St. Lawrence River.

A commission was created, with an appropriation of \$25,000, to act with a similar body representing the state of Indiana and with United States engineers to investigate the feasibility of creating an interstate harbor near Wolf Lake and Lake Michigan.

The city of Chicago or the sanitary district was authorized to construct a deep-water harbor in Lake Calumet.

The proceeds of a \$20,000,000 bond issue, formerly voted for construction of Illinois waterway, was re-appropriated.

Sums aggregating about \$66,000,000 were voted for road construction purposes, including \$30,000,000 derived from bond issue, re-appropriated.

A commission was authorized to standardize the salaries of state employees and given an appropriation of \$25,000.

A commission was authorized to investigate methods and conditions of mining in the state with especial reference to the safety of life and conservation of coal deposits; appropriation of \$7,000.

Inheritance tax-rates were doubled.

The prohibition enforcement law was greatly strengthened and made to conform to the act of Congress.

Acts in relation to pensions for teachers, policemen and other public employees were revised. The most important of these rehabilitates the Chicago police pension fund, as recommended by the state pension commission.

The secretary of state and other elective state officers were required to turn all moneys collected by them into the state treasury within thirty days instead of quarterly, as heretofore.

Provision was made by law for the payment of additional mileage to members of the general assembly elected in 1922 and thereafter.

Cities and villages of 5000 or less population were authorized to adopt the city manager form of government.

Chicago aldermen elected in 1920 for a two-year term were authorized to hold office for an additional year until the 1923 election.



Important measures that failed during the session included the state police bill, which was bitterly opposed by labor unions; a bill to place the election of mayor of Chicago on a non-partisan basis; proposals to require a referendum on bond issues of the Sanitary District of Chicago and the forest preserve district; several bills presented by labor organizations, including one limiting the working day of women in industry to eight hours, as recommended by Governor Lowden in his last biennial message; and one to fix a minimum wage for women workers. A bill to shorten the ballot by eliminating the names of presidential electors was vetoed by the governor on the ground that the plan had been adopted in only two other states and that its validity was doubtful.

Aside from matters incidental to the crush of legislation near the close of the session, the business of the house was conducted with tolerable efficiency. Speaker Dahlberg, while obedient generally to the wishes of the organization leaders, showed independence at times and was fair in his rulings. He kept close track of legislation and used the power of his office to kill a number of bad measures.

The events of the session, however, emphasized the great need for changing the rules of the house so that the speaker will have less autocratic power and will be required to call bills substantially in the order in which they appear upon the calendar. It is equally evident that the rules of the senate should be changed so as to decrease the number of committees, as each senator is now on so many committees that committee work in the senate is largely farcical. The senate rules should also require the keeping of records of committee roll calls, as is done in the house.

A valuable development in the house was the formation, on the initiative of Representative Castle, of a group of about forty members, who met weekly at dinner throughout the session to discuss pending bills. Partisanship and factionalism were strictly tabooed at those meetings. Besides giving members a better knowledge of proposed legislation these meetings proved to be highly beneficial in promoting closer acquaintance and more effective coöperation.

Appropriations to meet state expenses for the biennium beginning July 1, 1921, total \$79,368,267, as compared with \$62,109,030 appropriated at the 1919 session. This increase of \$17,259,247 is more than 27 per cent, the largest percentage of biennial increase in the recent history of the state.

SHELBY M. SINGLETON.

*Chicago.*



## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

The committee in charge of the program for the annual meeting of the American Political Science Association at Pittsburgh, December 27-29, has prepared the following tentative program: two sessions will deal with present problems of state government, including nominations and primary elections, and the reorganization of state administration; a third session will be devoted to present problems of the national government, including the question of centralization versus decentralization, and the question of ministerial responsibility versus the separation of powers; a fourth session will discuss the conditions on which the United States should enter a world organization for the maintenance of peace; a fifth session will be given to pending Far Eastern questions; and the sixth session will deal with Latin American questions. In addition to the joint session with the American Economic Association at which the presidential addresses will be given, a second joint session may be arranged to discuss questions of common interest, such as taxation problems, the economic interpretation of the fourteenth amendment, or international aspects of the tariff problem. Three round-table conferences are planned, one to discuss the report of the committee on the teaching of civics in high schools, and the other two to consider problems of college teaching, with special reference to constitutional law and international law.

In accordance with a resolution adopted during the last annual meeting, and with the approval of the executive council, the program committee has planned to have but one principal paper at each session, with the object both of concentrating attention upon questions of present political importance and of making possible the expression of views by a much larger number of the members of the association. It is desired that the principal paper be presented in spoken form and that the speaker arrange to have several other persons follow his address with a discussion of certain phases of the subject specially assigned to

them. Following this prearranged discussion, which may be regarded as a sort of committee report upon the subject, the question will be open for general discussion from the floor. The committee hopes that by this means a more active interest may be developed in the several sessions, and that at the same time the members of the association may be drawn more closely together by informal exchange of views. Obviously the success of the plan will depend in large part upon the coöperation of a large number of the members of the association in the discussion of questions which have been selected as being in the center of public thought at the present moment.

Mr. Edward Porritt, an English journalist long resident in America, and author of several notable books in the field of political science, died on October 8. Mr. Porritt was a vice-president of the American Political Science Association in 1918 and 1919.

Professor James W. Garner of the University of Illinois has been appointed to the Tagore professorship of law at the University of Calcutta, for the year 1922-23, for a course of lectures on the development of international law in the nineteenth century.

Dr. Blaine F. Moore, professor of political science at the University of Kansas, was employed during the summer as an expert by the United States tariff commission. Professor Moore's work pertained to problems of foreign tariffs.

Professor Edward S. Corwin, of Princeton University, has returned from a half-year of travel and research in England and on the continent.

Baron S. A. Korff has accepted a professorship of political science in the Foreign Service School of Georgetown University, Washington, D. C. He will give courses on modern European history, Russian history, science of government, and history of diplomatic usages and procedure.

After a year spent with the bureau of efficiency in Washington, Professor Victor J. West has returned to his position at Stanford University.

Professor Robert Leigh, formerly of Reed College, has taken charge of the undergraduate work in government in Barnard College.

Dr. Ralph S. Boots, of Columbia University, has been appointed assistant professor of municipal government at the University of Nebraska. Miss Luella Gettys has been appointed instructor in government at the same institution.

Professor Robert C. Brooks, of Swarthmore College, gave two courses in government at the summer session of Cornell University.

Mr. Malbone W. Graham has been appointed instructor in political science at the University of Missouri.

Professor Henry Jones Ford has resumed teaching at Princeton University. Dr. William S. Carpenter has been promoted to an assistant professorship of history and politics, and Mr. Kenneth Brown, a graduate of the Harvard Law School, has been made an instructor, in the same institution.

Dr. William Anderson and Dr. Quincy Wright have been promoted to the rank of associate professor at the University of Minnesota. Dr. Wright has been granted leave of absence for the autumn quarter to work in the naval intelligence office at Washington during the conference on the limitation of armaments. Mr. Forrest R. Black has been appointed instructor in political science for the year, and will give courses in place of Professor Quigley, who is in the Far East on leave of absence. Mr. Morris B. Lambie has been appointed secretary of the municipal reference bureau and assistant professor in the department of political science, where he will offer courses in public administration.

After a year spent in the Orient studying contemporary political conditions and problems, Dr. Sudhindra Bose has returned to the University of Iowa and has resumed his work as lecturer in oriental politics.

Mr. Magnus Nodtvedt has been appointed instructor in political science at the University of Iowa. Other recent appointments in political science at this institution are: Mr. Jacob Van Ek, Miss Mildred Sharp, and Miss Florence Fisher, graduate assistants.

Professor Raymond G. Gettell, of Amherst College, is conducting the graduate seminar in international relations at Clark University during

the absence of Professor George H. Blakeslee, who is engaged at Washington in the work of the conference on the limitation of armaments.

Mr. John A. Tillema and Mr. Earle W. Ketcham have been appointed as assistants in political science at the University of Illinois.

Professor John A. Fairlie, of the University of Illinois, was engaged during the summer at the Institute of Government Research at Washington, D. C., on a study of the financial administration of the United States.

John Bassett Moore, for twenty years professor of international law and diplomacy at Columbia University, was chosen by the Council and Assembly of the League of Nations in September to be one of the eleven members of the international court of justice. Professor Moore has had a long and varied career in the public service. He was a law clerk in the department of state in 1885, assistant secretary of state from 1886 to 1891, assistant secretary of state in 1898, secretary and counsel of the Spanish-American peace commission in 1898, and counselor of the state department in 1914. He has been a member of the permanent court at The Hague since 1914 and is vice chairman of the international high commission organized at the Pan-American financial conference in 1915. The remaining members of the court are Viscount Robert B. Finlay, of Great Britain; Charles André Weiss, of France; Dionisio Anzilotti, of Italy; Rafael Altamira y Gravea, of Spain; Senator Ruy Barbosa, of Brazil; Antonio de Bustamante, of Cuba; Max Huber, of Switzerland; B. C. J. Loder, of the Netherlands; Didrik Galtrup Gjedde Nyholm, Denmark; and Yoruzo Oda, Japan. The court will sit at The Hague, and it is hoped that it can be organized early in 1922.

Professor Thomas H. Reed, of the University of California, after teaching in the summer session at Columbia, has gone to Europe, where he will spend his sabbatical year in the study of political conditions, mainly in France and England. His courses in municipal government are being given by Mr. Paul Eliel, prominent in the civic life of San Francisco. The political science department has been strengthened by the addition of Professor F. J. Teggart, who will give courses in theory and social institutions; Samuel C. May, who comes from Dartmouth as assistant professor of public administration, and who is

spending the first half year abroad; Mr. F. E. Hinckley, of the school of jurisprudence, who is lecturing on Far Eastern relations; and F. M. Russell, who comes from Stanford as lecturer and gives course in international coöperation. During the first half-year F. W. Hirst, the English economist, lectures on certain features of parliamentary life in the United Kingdom. President Barrows conducts a seminar in international relations and gives a course in comparative government. In view of the fact that the department contemplates a steady expansion of interest in foreign relations, a bureau devoted to that field, under the direction of Dr. A. W. Mah, is accumulating materials for research.

At an election held on August 2, the voters of Missouri by a large majority declared for a constitutional convention. The governor will issue a call for the election of delegates to the convention, and the election will probably be held in January, 1922. The convention will meet, on a date to be fixed by the governor, within six months of the date of election of delegates.

A regional conference on town and county administration was held at Chapel Hill, N. C., September 19-21, under the auspices of the University of North Carolina and the National Municipal League, with the coöperation of other North Carolina organizations. In addition to the general meetings, special sessions dealt with problems of municipal finance, municipal administration, county administration and town and county.

The annual meeting of the Academy of Political Science, held at the Hotel Astor, New York, on November 4 and 5, was devoted to the subject of constructive experiments in industrial coöperation between employers and employees. The speakers included many representatives of important industrial establishments and of national and state labor bureaus and boards.

## BOOK REVIEWS

EDITED BY W. B. MUNRO

*Harvard University*

*International Law and the World War.* By JAMES WILFORD GARNER. (New York: Longmans, Greene and Company. 1920. 2 vols.)

Two principal tasks confront the writer of such a work as this, namely to collect as much material as possible illustrating the interpretation and application of the law of warfare on land and sea and the rights and duties of neutrals, and to arrange it systematically for inspection by the student. Both of those tasks have been performed with great success by Professor Garner. As a result we have a monumental study of international legal history from 1914 to 1918.

There are certain materials which are not to be found in these volumes. The bulk of the German material is missing, mainly because it was inaccessible at the time. There are also materials on the Allied side, especially dating in 1917 and 1918, which were not available. Much of this deficiency might be made good now; but much will still be inaccessible for years to come.

It would not have been wise, however, to have waited until all the records were available before attempting the work. It will be comparatively easy to compile such a treatise in 1950—and comparatively useless. It is a courageous and serviceable thing to undertake the work now, in face of the difficulties of the situation, and when a verdict may have some force.

Much has been made of the statement in the preface that the lack of materials from the German side is comparatively unimportant. It should be noted that this remark was made after a failure to obtain the German materials, not as an excuse for not trying to obtain them. The extensive use made of such German materials as were available makes this clear.

Much has also been made of the author's very obvious pro-Ally bias. This accusation comes from two sources—from those with an

opposite bias, and from the legalists who assume that it is possible and pretend that it is desirable to adjudge national actions entirely by clear and fixed rules of law. When the legalist and the pro-German are one, the result is terrific. Yet it must be said over and over again that in the field of public law, especially the law of war as it stood in 1914, there is so much disagreement as to technical standards of conduct that judgments must be based largely on equity and reason. It means that the difficulty and danger of attempting to judge are greater—and Professor Garner, like Phillipson in 1915, has fallen into what seem clearly to be errors of judgment—but it does not mean that the task should be abandoned or postponed or restricted to purely legal topics.

In arranging his materials Professor Garner has been still more successful. The whole of the law of war and neutrality is reviewed in orderly detail. Not content with amassing the vast amount of data from the wide fields of the diplomacy, legislation, administration, and military operations of the war, the author has provided a very useful historical introduction for each topic, summarizing the law as it stood in 1914, and giving copious citations to the standard authorities before launching into a review of the interpretation and application of the law during the war.

There are several errors in these introductory passages. Unneutral service is not distinctly treated at all, the origin and purpose of the doctrine of continuous voyage is not accurately described (Sec. 502), and there are errors of law in the chapter on blockades—such as a reference to the “admitted right of a belligerent to cut off the over-seas commerce of the enemy.” These are probably due to the haste with which the author was compelled to work out the subject.

When all this is said, however, the fact remains that the work is a vast mine of materials and a remarkably complete outline of the field. Only one who has, like the reviewer, used the work extensively in daily class instruction can realize the completeness of the treatment embodied in the thousand pages of these two volumes. The author will doubtless desire in later editions to revise certain judgments, supply certain additional materials, and, in general, clear up many confused passages in the text. All the more will the work become the accepted treatise on international law during the World War.

PITMAN B. POTTER.

*University of Wisconsin.*



*The Economic Development of France and Germany, 1815-1914.*

By J. H. CLAPHAM. (Cambridge University Press. 1921. Pp. xi, 420.)

Professor Clapham's present work is an outgrowth of the chapters written for the Cambridge Modern History. It is designed to furnish a substantial survey of the economic transformations of the nineteenth century with especial reference to the needs of university students, and the interests of these, as of many other readers, will be fully satisfied.

Such studies as we have had bear no direct comparison with the present work. No other writer has attempted as much, and none have succeeded as well even in the restricted fields chosen. Only those who have endeavored to collect material on the industrial history of France and Germany for the first half of the nineteenth century will appreciate adequately the full measure of Professor Clapham's achievement. His text is well proportioned despite wide differences in the accessibility of materials; his judgments are sound and free from the doctrinaire elements that disfigure much writing on the period; he shows a remarkable range of genuine sympathy, treating with absolute equality of interest and appreciation the entire list of topics: agriculture, industry, transport, commercial policy, and labor.

High costs of book making have resulted in the elimination of maps of all kinds, and, though we can sympathize with author and publisher, the absence of maps leaves us with regrets at many points. The description of the various agricultural frontiers is very hard to follow without a shaded outline map.

The problem of bibliographical references, too, was settled in a fashion that is not without inconvenience to the reader who wishes to follow out the suggestions of the text. It is undoubtedly superfluous to use footnotes for each detail as is customary in a monograph, but carefully selected references covering the ground of particular chapters are of the greatest value. There are some footnotes, and some general references are given in the preface. The reader is urged to consult the bibliographies in the Cambridge Modern History and in Conrad's *Handwörterbuch* for further detail. Many authors do no more for a reader, but when the author has shown such critical power in the text it is to be regretted that he did not render the further service of a brief but critical bibliography. A comprehensive survey cannot be an end in itself, it fulfills its purposes most fully when it creates a desire to go beyond. The guidance of further research and study is in this sense the highest

function of a book of this character; the better the book, the more important this final service becomes. The author can do much for the average reader and for the growth of scholarship by communicating not only his finished judgments but also his critical reactions to the best literature on the subject at the time of writing. Scholarship is cumulative; growth is stimulated most readily, and progress to the ultimate goal is most direct when the reader is given an opportunity of following the author through the controversial problems of the subject. Several instances of the value of such helps have already come to the attention of the writer, but it is not easy to present the detail of these cases within the compass of the review.

We have been told by Sombart that Germany became a great industrial nation by sheer force of the will to power; Veblen has told us that Germany became great through an unusual racial instinct for imitation; much interpretation of recent European development is based upon the industrial dependence upon coal and iron. Professor Clapham puts forward no simple formula of interpretation, but the writer does not know of any judgment of these matters that can be ranked with Professor Clapham's in its careful discrimination of the relative importance of the political and physical factors involved. The territory of France was not suited to extreme industrialization, especially after the losses of the border provinces; but Professor Clapham feels that more might have been accomplished if the political history of France had been less troubled and the attention of her statesmen less distracted. The influence of the defeat of 1871 is sympathetically appreciated. The relations between economic and political factors in the development of Germany are sketched with clear and sober judgment, notably in respect to the influence of tariff policy upon industry and agriculture.

ABBEY PAYSON USHER.

*Boston University.*

*The Labor Problem and the Social Catholic Movement in France: A Study in the History of Social Politics.* By PARKER T. MOON. (New York: The Macmillan Company. 1921. Pp. xiv, 473.)

The first four words might well have been omitted from the title of Professor Moon's volume. Except for a section in the first chapter, the labor problem in France is described only incidentally to the treatment of the development of the Social Catholic movement and theories.

Social Catholicism represents the endeavors of the French Catholics to adjust modern society to two new facts of the nineteenth century, the industrial revolution and the democratic revolution. Up to 1892, the Catholics who denounced economic liberalism for causing social injustice also repudiated political liberalism. The intervention of Leo XIII, urging all French Catholics to cease anti-Republican agitation, led to a greater emphasis on their social program; the Dreyfus affair brought the conviction that the Catholic religion in France was menaced by the Waldeck-Rousseau anti-clerical *bloc* of Moderates, Radicals, and Socialists. Hence the resulting need for a constructive politico-social program and a fighting organization of the *Action Libérale Populaire*. The party got its Social Catholic character from Count Albert de Mun, organizer of the Catholic workingmen's clubs, advocate of labor legislation, social insurance, and Catholic guilds. The Social Catholics have since extended their organization and elaborated their program of social reconstruction and constitutional reform.

Professor Moon has succeeded in giving impartial treatment to highly controversial material. By giving considerable space to the critics of the Popular Liberal Party, to the dissident groups among the French Catholics, and to other social reconstruction programs, he has put the reader in a position to judge for himself the real nature and significance of the movement and its theories. The reader may not agree that "the Social Catholic movement may be regarded as a force comparable in magnitude and in power to international Socialism, or Syndicalism, or to the coöperative movement," (p. vii) and he may not find the Popular Liberal Party "quite as interesting, in point of political theory and social doctrine, as the Socialist and Syndicalist movements in France." (p. x.)

When so much material is given the reader to permit him to form his own judgment, it is perhaps ungrateful to ask for more. The reviewer misses a discussion of the extent to which the Social Catholic program, "a synthesis of the leading ideas that have been put forward by each of the opposing schools of social reform," represents the result of the interchange of opinions among all schools, rather than the original thoughts of the Catholics. By restricting his treatment to Catholic thinkers, Professor Moon gives rise to the impression that the Social Catholic theories are more original than the reviewer believes them to be. Moreover, there is too little emphasis on that characteristic of the Social Catholic program which differentiates it from those of all other schools,—the insistence on authoritative determination of the aims and methods

of social reform by the interpretation put on Christian principles by the clerical hierarchy. However much some points of the program may find acceptance, this most important characteristic is repellent to the modern spirit.

R. S. MERIAM

*Harvard University.*

*Allied Shipping Control. An Experiment in International Administration.* By J. A. SALTER. (Oxford: The Clarendon Press. 1921. Pp. 354.)

After reading this book, which is one of the volumes published under the auspices of the Carnegie Endowment for International Peace on the economic and social history of the world war, the reviewer feels that he is in little danger of overestimating its value to those interested in current international problems. It is the work of a man with a broad philosophy of international well being, balanced however, by common sense well fortified by experience. The book brings gifts to the economist who wants to know the effect of substituting public control for private competition; to the strategist who wishes to estimate the relative importance of sea power and land power, of war against the enemy's economic life and against his military forces; to the international lawyer who desires, as he ought to, a more intimate acquaintance with the means of controlling neutral and enemy commerce required for conducting effective warfare against the enemy's economic life; and especially for the internationalist, who, desiring a diminution of war and an increase of international coöperation, wants to know why many apparently direct roads to these desiderata are rightly considered futile, by practical men and how real progress can be made.

The author discusses in detail the development of British and Allied control of shipping with reflections upon the necessity brought by the war for a continually increasing public control of shipping and through shipping of practically all commodities. At first national, this control became more and more international, until finally the effective seat of power was in the Interallied Maritime Transport Council. This "hot house development of international coöperation, normally a delicate plant of slow and precarious growth" (p. 243) throws important light upon the problem of international organization in time of peace. The author is convinced that international administration in matters of political importance, can not be effectively conducted by organs

separated from national governments. He recommends effort toward a coöperation of responsible heads of national departments in advisory committees, backed by a continuous organization of administrative experts of the various governments (p. 261). International administration, he thinks, must permeate and influence national administrations, not attempt to coerce or ignore them.

The adoption of this principle by the League of Nations augurs well for its success in the opinion of the author. It is rightly "a great effort of decentralization," not a super-government (p. 255). The book is clearly written and replete with statistical tables and diagrams. Though much of it is necessarily of a technical nature, on a few occasions, as in describing the effects of submarine warfare and the predicament of the allies in 1918, the style rises to dramatic intensity (pp. 117, 157).

QUINCY WRIGHT.

*University of Minnesota.*

*War Government of the British Dominions.* By ARTHUR BERRIE-DALE KEITH. (Oxford: The Clarendon Press. 1921. Pp. xvi, 354.)

This volume is one of the series planned by the Carnegie Endowment for International Peace to cover the economic and social history of the World War. The editors are fortunate in securing Professor Keith to write the present volume. Although his chair at the University of Edinburgh is that of Sanskrit and Comparative Philology, he has to his credit a long list of writings on the constitutional problems of the British Empire. The admiring critic can only wonder when Professor Keith gets the time to work at the Sanskrit in which he is a great authority, for his writings on the politics of the British Empire show an amazing range and accuracy of erudition. He quotes from the debates in all the legislatures of the British dominions; he cites not merely out of the way pamphlets, but also daily newspapers issued in widely separated parts of the empire. Truly he is one of the remarkable scholars of our time.

In thirteen chapters this volume discusses the framework of the British Empire when war broke out, the slow realization of the need for new machinery of coöperation, the creation of the Imperial War Cabinet, a cabinet of the governments of the chief British states, the history of the political, economic, and military activities of the dominions during

the war, the treaty of peace and the status of the representatives of the dominions as signatories of the treaty, and, last of all, the effect of the war upon the relations of the various self-governing British states.

When the war broke out such a British state as Canada governed itself in all important particulars, but the Governor-General sent from Britain was the medium of communication between the two governments. Canada considered itself a free nation within the British Empire, but its status as such was not specifically recognized. As the war went on uncertainties were cleared up. Canada and the other British dominions insisted on putting the Governor-General and the colonial office in the background, and the Canadian Prime Minister now communicates with the British Prime Minister as a colleague on equal terms. Carrying out this idea of nationhood and demanding recognition of it by the world, Canada signed the peace treaty exactly as France and Great Britain signed it.

This story is told fully by Professor Keith, but as he points out it is not the whole story. These various British states, each of them claiming to be a free nation, are yet under one sovereign and under one legislature with ultimate legal authority over every part of the British Empire. The Constitution of Canada is delegated to the people of Canada by the sovereign authority of the Parliament of Great Britain. Great Britain alone still has the power to declare war, and when she is at war the whole British Empire is technically at war. There is not merely a legal but a spiritual unity of interest in the British Empire. On great questions its people are certain to stand together, and it is not easy to get foreign nations, such as the United States, to agree that the British Empire may claim in international affairs the weight of half a dozen states, while at the same time they really serve the one interest of a great empire. Many anomalies there are, and the only solvent will be time and experience. One thing, however, is clear as a result of the war: such dominions as Canada and Australia will henceforth take an active and effective part in directing the future policy of the British Empire.

On one point it may be wise to dwell. The charge has been made that Great Britain held back and let the dominions do more than their share in the war. Professor Keith points out that never, even in the hour of direst need, did Great Britain make any demand on the dominions, and that by no act of hers was any kind of compulsion put on anyone outside Great Britain. She recruited as serving troops 27.28 per cent of her male population, and her casualties were 10.91 per cent.

The proportions for Canada were 13.48 per cent recruited, and 6.04 per cent of casualties, and for Australia 13.43 and 8.5 per cent respectively: no one claims that Canada and Australia did not do their duty; it is fair to show that in respect to both men and money the strain on Great Britain was much heavier.

Professor Keith is so careful a writer that we may accept his statements as being as accurate as existing information permits. He has given a lucid account not only of government during the war but of constitutional changes made quietly but inevitably, and so far-reaching that not for many years will their full significance become apparent. The British peoples and especially those of Canada are deeply interested in hoping that these changes will be studied in the United States, and that they will meet with sympathetic recognition.

GEORGE M. WRONG.

*University of Toronto.*

*Constitutional History of England.* By GEORGE BURTON ADAMS.  
(New York: Henry Holt and Company. 1921. Pp. 518.)

The contributions which Professor Adams has made to the interpretation of English constitutional history are known to all scholars in that field. Happily, he has not neglected to bring together the fruits of his learning in a book adapted to, and written for, the less mature student. Such a book, indeed, came from his pen three years ago, under the title *Outline Sketch of English Constitutional History*. A marvel of condensation, this little volume found wide usefulness. The author, however, has rightly judged that a book on the same lines, but two or three times as large, would meet still other needs; and the volume here under review—which is a freshly written book, although it incorporates some parts of the earlier one—is the very welcome result.

The treatment of the subject is chronological, and the entire stretch is covered from pre-Saxon times to the close of the Great War. Careful allotment of space continues necessary. But by assuming a knowledge both of political history and of the system of government in our own time, the author has found it possible to tell the story of constitutional development in a comprehensive, and in places even a detailed, manner. The object has been to "make the continuous growth of the constitution from generation to generation as clear as possible;" and questions of what to include and what to omit have been decided solely with this end in view. No serious fault can be found with the decisions made.

Among subjects which seem to the reviewer to have been dealt with particularly well are the Norman contributions to English institutions, the early history of Parliament, the significance of the Bill of Rights, the rise of the cabinet, and the changes affecting the relations between the electorate, Parliament, and the cabinet. On the other hand, the relation between political thought and constitutional growth seems somewhat under-emphasized, as does also the significance of the expansion of governmental functions in recent generations.

Exception may be taken, here and there, to the author's opinions on specific matters. For example, the margin between the parliamentary electorate after the reform act of 1832 and universal suffrage hardly seems "of comparatively small importance," considering that under the law mentioned it came about that one adult male in every four was debarred from voting. And the fact has somehow been overlooked that the local government board was merged into the ministry of health in 1919. But not much fault can be found on these lines. In general, facts are presented with exceptional accuracy, and the judgments based on them are sane, cautious, and convincing.

Bibliographical lists are supplied, but are very brief. Probably brevity is desirable, in view of the book's purpose. But there are some doubtful omissions, as, for example, Money-penny and Buckle's *Life of Disraeli* and the *Letters of Queen Victoria*.

FREDERIC A. OGG.

*University of Wisconsin.*

*England in Transition. 1789-1832. A Study of Movements.* By WILLIAM LAW MATHIESON. (London: Longmans, Green and Company. 1920. Pp. xiv, 285.)

*Queen Victoria.* By LYTTON STRACHEY. (New York: Harcourt, Brace and Company. 1921. Pp. 434.)

For his "study of movements" Dr. Mathieson has not attempted to add, through original research, to the material already available in printed form in the histories, the biographies, and the monographs on single phases of the British developments of the momentous years between the beginning of the French Revolution and the Reform Act. His object has not been to add to the information already available in regard to the many progressive movements and agitations of this period. He does not attempt to reinterpret the movements as they have been presented by such writers as the Hammonds, Jephson,



Graham Wallas, Butler and Trevelyan. His aim has been to correlate the various movements of the forty-three years under review, and to show them as simply different phases of the general forward march of the nation under the influence of the philosophical ideas which on the Continent of Europe brought about the French Revolution.

While selecting the French Revolution as his starting point, he makes it clear that he does not consider the English movement towards democracy as being due to the great events in France. The movement had already begun in England, and was native to England. It was stimulated by the French Revolution only in so far as the Revolution made more easily possible the questioning and the new evaluation of institutions and traditions which had stood in the way of progress. Even before 1789 there were clearly discernible movements for social reform—against drunkenness and loose marriage relations—for popular education, for prison reform, against the slave trade, and for the betterment of the condition of the poor. All these movements were quickened and enlarged in scope after the outbreak in France; and Dr. Mathieson, instead of confining himself to one phase of the subject—to the movement for parliamentary reform, for the abolition of the slave trade, for the freedom of the press, for the delivery of the workingmen from the slavery imposed upon them under the conspiracy laws, for the betterment of child labor conditions, for penal reform, for church reform, legal reform, or reform of the land-laws—takes all these movements and in fact covers almost exhaustively the various aspects under which the intellectual and humanitarian spirit of the age manifested itself, and sets himself to demonstrate their close kinship. In the short space of 280 pages he gives the reader a picture of the England of the eighteenth century, and of its rapid transformation into England of the nineteenth century, a transformation which affected every class, but most of all the workers, the poor, and the human waste that war, the factory era and the land enclosures had caused.

It would be helpful to the reader if Dr. Mathieson had given a brief bibliography as a guide to further study of the various phases of the period. As it is, one has to search the footnotes for his sources and authorities, and these footnotes are not even included in the index. The book can never take the place of the longer and fuller treatises on the various movements here included. It does not attempt to do so. Its great value lies in the fact that it correlates these movements and checks the tendency to lay undue stress on one factor to the neglect of the many other factors which brought about the great change from aristocratic to democratic England.

Nine readers out of ten will be attracted to Mr. Strachey's book by the glimpses contained in it of royalty at close range, and by the interesting story of the greatest queen of modern times, or indeed of any times, seen with all her limitations, and littlenesses, as well as with her prestige, her wealth, her glory and her happiness. But the tenth reader will find much more than story-book interest in Mr. Strachey's pages. He will see the working out of opposing forces which resulted in the development of the British Constitution.

Queen Victoria's reign was a formative period for British democracy. When she came to the throne one great step had been taken in the Reform Act of 1832; but the whole government was still aristocratic. The king had lost power, but the people had not yet gained it. In Prince Albert and his adviser Baron Stockmar there came into the struggle two able and persistent men who were determined that the crown should be reinvested with real authority, and for over twenty years there was going on—almost unknown to the nation—this constant trial of strength between sovereign and ministers. Albert was never popular in England; but it is safe to say that his unpopularity would have been enormously increased had the people at large realized what he was trying to do to their country.

Mr. Strachey makes it appear almost an accident that the Prince did not succeed; but he acknowledges that Albert neither understood nor liked British methods and the British spirit. The German prince wanted a machine. He had to deal with a living organism, and the same mistake that was made by the Germans at the beginning of the Great War, was made by Albert when he failed to realize that there is a force in living matter that can subdue the most perfect of mechanisms. How much this living force of British institutions had to encounter during the years of Prince Albert's activity is exceedingly well told in Mr. Strachey's pages, in spite of the fact that he adds very little new material to what was already available in biographies or histories.

A. G. PORRITT.

*Hartford, Conn.*

*Men and Manner in Parliament.* By Sir HENRY LUCY. (New York: E. P. Dutton and Company. 1921. Pp. 259.)

Among the many good scribes who have sat in the press gallery of the House of Commons few have achieved greater renown for intelligent reporting than the veteran journalist Sir Henry Lucy. Mr. Lucy began

his work at St. Stephen's about fifty years ago and continued to discuss the doings of Parliament till his retirement in 1916. Soon after the election of 1874 he prepared a series of articles for the *Gentleman's Magazine* in which he recorded his impressions of the British legislature in a genial and somewhat unconventional manner. The articles were widely read and were published later in book form under the title *Men and Manner in Parliament*. Mr. Lucy points out and described the orators and the talkers, the party leaders and the independent members, the Irish and those who sat in silence. In his closing chapter he has something to say about those who did not survive the election. In all about two hundred men are passed in review and their strong and weak points, their eccentricities, and their behavior on the floor of the house are indicated and discussed in a manner that seems to be quite free from partisanship.

During the past year the work has been republished, but so far as the reviewer is able to determine Mr. Lucy has revised neither his text nor his critical estimates. Students of history who are interested in the great parliamentary battles of the seventies will find Mr. Lucy's papers both entertaining and informing. For the political scientist the work has little value except as it illustrates the daily routine of the House of Commons.

L. M. LARSON.

*University of Illinois.*

*Great Britain in the Latest Age. From Laisser Faire to State Control.* By A. S. TUBERVILLE and F. A. HOWE. (New York: E. P. Dutton and Company. 1921. Pp. 342.)

This book has its origin in a series of lectures delivered by the authors to British troops in Germany in 1919 under the army education scheme. Because of the interest in recent and contemporary history these lectures form the basis of the book, designed as it is for use in classes in adult education as well as in secondary and continuation schools. The aim is to provide "a brief introduction to the study of the general, and not solely the political, history of Great Britain in the Latest Age" (broadly, the nineteenth century).

There are obvious difficulties in presenting in a single volume to readers with no great historical background the significant developments of the last century. The authors have adopted a combination of methods to assist them over these difficulties. The first three chapters are en-

titled "Landmarks in the History of the Nineteenth Century," with the subtitles "Laissez Faire (to 1851)," "Splendid Isolation (1851-1901)," and "L'Entente Cordiale." Following these chapters of summary and review come eleven topical chapters in which particular elements of growth are treated in more detail. The topics treated thus are: steam power and machinery, modern transport, farming, political theory, capital and labor, poverty and unemployment, imperial expansion, commercial foreign policy, constitutional development, educational reform, and intellectual achievement.

In the first three chapters which aim to give a coherent story of British development during the period, the authors have only fair success. The account of the movements leading to the Reform Act of 1832, with its description of England after Waterloo and the work of such leaders as Francis Place, is an excellent succinct statement. The later treatment of the period from 1851 to recent times remains too much, however, a brief statement of successive happenings, and the limitations of space or arrangement of material have resulted in some lack of unity to the narrative which is only superficially due to shifts in British policy.

The chapters which discuss special topics in greater detail achieve a larger measure of success. Those on the significance and implications of the Industrial Revolution are excellent, and the gradual development of policy from laissez faire and persecution of combinations of labor to state regulation of the plane of competition and trade union organization is admirably traced. The chapter on political theory is largely a brief summary of the more important ideas of certain outstanding theorists from Burke to the Guild Socialists, and is too sketchy to orient properly the development of political ideas in relation to the larger currents of social changes. The discussion of constitutional development includes an excellent description of the growth in importance of administration as compared with legislation which is generally neglected in brief treatments of this kind, and concludes with a summary of the proposals of the recent committee on the machinery of government, of which Lord Haldane was chairman.

*Great Britain in the Latest Age* is especially useful in its treatment of the industrial and commercial developments of the last century with their social and political implications. The authors have been successful in their stated purpose of presenting a "general, and not solely, the political, history." Those chapters devoted to industrial and commercial change are therefore better balanced and more interesting in

arrangement and presentation. There is a good index, but the volume would be more useful to the people for whom it is designed if there were maps showing British development during the last century, and statistical tables covering industrial and commercial growth so much emphasized in the text.

JOHN M. GAUS.

*Amherst College.*

*Liberalism and Industry: Towards a Better Social Order.* By RAMSAY MUIR. (Boston: Houghton, Mifflin Company. 1921. Pp. 208.)

English Liberalism, whose basic policy under the leadership of Gladstone and Bright was the liberation of intercourse and the non-intervention of the state in industrial matters, abandoned the philosophy of laissez-faire in the first decade of the present century, and under the pressure of the Labor Party from without and Lloyd George and Churchill from within became the party of piece-meal social reform. It emerged from the war divided in leadership and in organization, somewhat discredited popularly, and with many of its finest spirits deserting it for the Labor Party.

Professor Muir, in this book, attempts to rehabilitate Liberalism by working out an industrial policy which will be based fundamentally upon the belief in the supreme value of individual freedom, but which will at the same time remove most of the injustices in the social order that are provocative of justified discontent. He rejects both socialism and syndicalism as the ideal; the first because the necessary industrial and governmental bureaucracy would not only be inefficient but also unduly restrictive of individual freedom; the second because it would put the consuming public at the mercy of the workers in the key industries. He holds that the system of individual enterprise, with its profit motive and interest upon invested capital, is fundamentally sound because of the stimulus it affords to working and saving, but he also declares that the system must be purified of its abuses, if it is to endure.

This policy of basic reform really falls into three parts: (1) The guarded nationalization of the railways and the mines. (2) The co-operation of labor and capital both in individual plants and in each industry as a whole, much along the lines of the works-councils plan of Giolitti. (3) A taxation program to include: (a) heavy inheritance taxes, (b) income taxes running up to 75 per cent, (c) taxes upon

especially profitable concerns which have securely established themselves, and (d) the appropriation by the community of the unearned increment in land.

If the Liberal Party were sincerely to adopt this policy (which is doubtful, when the power of the large industrial and capitalistic interests in the party is considered), it and the Labor Party would have enough in common to ally them on an internal program for at least a decade and perhaps for a generation.

PAUL H. DOUGLAS.

*University of Chicago.*

*The Case of Korea: A Collection of the Evidence on the Japanese Domination of Korea, and on the Development of the Korean Independence Movement.* By HENRY CHUNG. With Foreword by Hon. Selden P. Spencer. (New York; Fleming H. Revell Company. 1921. Pp. 365.)

The nature of this book is correctly stated in the title. Dr. Chung, who is an American-educated Korean, has brought together a great amount of evidence, of uneven value, to support the case of the Korean political leaders against Japan. Because of his industry in gathering this material, and in properly citing it, as well as because of his personal knowledge of the inside operations of the national movement, the book is of much immediate interest and of some permanent value.

In his foreword, Senator Spencer truly states: "Civilization demands the truth—the whole truth and nothing but the truth." But this book cannot be said to measure up to that standard. The whole truth does not consist in omitting every explanatory element, and Dr. Chung, in spite of his scholarly training, has presented a piece of special pleading—but we could hardly expect a Korean spokesman to do otherwise. His description of the massacre of twenty-nine Koreans at Chai-amm-ni is, to be sure, taken from a newspaper. But it fails to mention that the reprisals were due to the murder of two Japanese policemen in the village. So an account of the Japanese relations with Korea, which fails to mention the attacks upon the Japanese legation in Seoul in 1882 and 1884, and the murder of Prince Ito by a Korean in 1909, does not give the reader a fair chance to form a sound judgment.

Americans cannot help sympathizing with the desire of the Korean people to regain the independence which their ignorant and corrupt rulers and officials sacrificed. But Americans also should not expect

the Japanese, who have had to learn how to deal with foreign peoples only in the last fifty years, to measure up to the standards set by Britain, who has been conquering and colonizing and ruling for the past three hundred. There were certainly many reprehensible things done in Korea by police and soldiers during the independence agitation in 1919. But a wider knowledge of the way in which subject peoples have been handled in the rest of the world, not only in Asia but in Europe and America, would temper some of the unqualified denunciation of Japan.

PAYSON J. TREAT.

*Stanford University.*

*The Republic of Liberia.* By R. C. F. MAUGHAM. (New York: Charles Scribner's Sons. 1920. Pp. 299.)

This volume, in keeping with its subtitle, is more of a treatise on Liberia from a layman's point of view than a scientific study. It is a general description of the country with its history, commerce, agriculture, flora, fauna and present methods of administration. When the student of social sciences has read it, therefore, he realizes that there is still room in this field for a large contribution. The increasing interest of the civilized world in African affairs has given rise to the demand for authoritative works on the life and history of many parts of Africa. That the author has not produced a work measuring up to this standard is evident when, according to his own prefatory statement, he depended for the historical facts altogether upon the works of D'Ollone, Jore, Delafosse, Johnston, and Starr; and for facts and illustrations of the fauna, flora, and life of the natives upon several others.

The value of the book, however, is apparent, in that, although it is not scientific, it is written sympathetically—a departure from most works on Liberia. The author's predecessors have found in Liberia little worthy of commendation. Most of their works have been devoted to a comparison of the civilization of the Liberians with that of Europe or America, showing how different the Africans are from the whites and figuring out exactly what the unfortunate blacks must do and how long they will have to toil before they can hope to develop a civilization like that of the Caucasian. Maugham himself develops his story by such comparison, although he does meet here and there the requirement for treating these problems scientifically. He undertook to invade this field without preoccupation of mind. He realized that in the life of these

people there is something worth while and he endeavored to find more of it.

Although he did not find the rung which Liberia had reached a high one, he became convinced that the way before is plain and unmistakable, although the native for some time to come must be guided by foreigners like those recently established in that country by the Wilson administration to appropriate to their use in the form of high salaries a large portion of the loan recently advanced the Liberian government. Mr. Maugham considers it a good omen, moreover, that the new President, the Honorable C. D. B. King, has committed himself to "a definite policy so far as economic and industrial development is concerned, and has cordially encouraged representatives of international capital, who have acquired important interests in Liberia, with considerable plans for development work on a large scale." While no farsighted person will consider the investment of foreign capital an unfavorable omen, it is evident that outlays of such a large order will inevitably result in the subjection of the natives of Liberia to foreign masters intent upon the development of an economic system which labor is today trying to destroy in the so-called more advanced parts of the world. This book in spite of itself, therefore, idealizes capitalistic control as a desirable situation for Liberia.

As the facts set forth in this work are generally well known, the book cannot be considered a contribution; but certain aspects of the life and history of the country have been given all but original treatment. The author has told an old story interestingly, said so many things which the man from without will want to know, that until the more scientifically prepared investigators undertake the task, this work will be regarded as a valuable book on Liberia. After reading it the traveler will feel that he has seen the fauna, the flora and the natives; the pioneer that he has an excellent estimate of the economic possibilities of a once despised but now attractive country.

C. G. WOODSON.

*Howard University.*

*Debates in the Federal Convention of 1787 which Framed the Constitution of the United States of America.* Reported by James Madison. International Edition. Edited by GAILLARD HUNT and JAMES BROWN SCOTT. (New York: Oxford University Press: 1920. Pp. xcvii, 731.)



*The United States of America: A Study in International Organization.* By JAMES BROWN SCOTT. (New York: Oxford University Press. 1920. Pp. xix, 605.)

These two substantial volumes are issued under the auspices of the Carnegie Endowment for International Peace. There have been three previous printings of Madison's *Debates*, all of them reasonably accurate. The present edition does not claim to embody any considerable improvement in this direction although it has had such careful collation with the original manuscript as to preclude every possible chance of error. Differences between this original and Madison's later transcript are indicated in the footnotes. The introduction contains many interesting documents including the proceedings of the Annapolis convention and the credentials of all the delegates appointed by the several states to attend the convention of 1787. The index, which covers thirty pages, is invaluable.

The *United States* is an even more noteworthy volume. It is a study of the various steps leading to the union of the states, the colonial background, the establishment of the state constitutions, the federal convention (which the author calls "An International Conference"), and the Constitution as a document. Several chapters deal with the federal judiciary, its organization, powers and development. The greater portion of the book, in fact, is a commentary on the Constitution of the United States insofar as its provisions relate to the several commonwealths as such.

The author's comprehensive scholarship and thorough legal training have enabled him to do all this in a way which will impress the student as being neither too technical on the one hand or too general on the other. Quotations from official documents and from Supreme Court decisions are inserted freely, yet the book is far from being a mere compilation. Take, for example, the chapter which deals with "Judicial Powers and their Relation to Law and Equity." It would be difficult to combine comment with quotation to better advantage than the author has done in this instance. The appendix of more than one hundred pages gives the text of many documents which students of American government will be glad to have within arm's reach. These include all the plans for a union prior to 1787 and all the chief memoranda (Pinckney's plan, Randolph's propositions, the New Jersey plan, etc.) which were laid before the convention at Philadelphia. Dr. Scott has given us a very useful volume, worthy of a place on any man's bookshelf.

W. B. M.

*The United States: An Experiment in Democracy.* By CARL BECKER. (New York: Harper and Brothers. 1920. Pp. 333.)

Professor Becker undertakes in this volume to describe the origin and development of the principles of democracy in the United States giving special emphasis to such principles as are regarded peculiar to American politics and economics. The first few chapters trace the beginnings of democracy in America, the series of chapters following is devoted to the relation of these principles of democracy to certain typical American conditions and problems such as free land, slavery, immigration, education, and equality. A large part of the volume is comprised of a rehearsal of well known historical facts interspersed by occasional suggestive observations. For example, parts of the second and third chapters are given to an account of the aristocratic methods and practices which largely controlled the colonial governments. In this respect a story is repeated which forms a part of most recent works on general American history or American government. An account of similarly well-known historical facts constitutes a large portion of the volume. Somewhat more emphasis is accorded to economic and social factors in the formulation of the typical American principles of democracy than is customary in general treatises.

The author has attempted in his discussion of certain topics to combine history and government. This attempt has resulted in a superficial treatment which cannot be of much use either from the standpoint of history or of government. In the effort to make this combination and to relate the discussion to modern political problems, the author often passes rather abruptly from colonial times and the political ideas then prevalent to the conditions which prevail in the United States at the present time. Warning is given in the concluding chapter against the dangers of absolutism whether of the few or of the many, on the theory that democracy is unsafe when based on the dominance of any class or economic group. As in a number of similar instances the facts of history are brought in review to help form a judgment on a modern political problem.

An occasional use of personal incidents and a free and easy style render the chapters of the volume readable. Since the work appears to have been prepared for the general reader and not for the specialist, a semi-popular form of presentation is followed. The underlying principles

of American democracy, so far as that term can be accurately described, are well stated in language that any citizen who can read clear English can understand.

C. G. HAINES.

*University of Texas.*

*Local Government in the United States.* By HERMAN G. JAMES, Professor of Government in the University of Texas. (New York: D. Appleton and Company. 1921. Pp. xv, 482.)

During the last decade numerous books have been written on the subject of city government. With the exception, however, of Professor John A. Fairlie's treatise on *Local Government in Counties, Towns and Villages*, originally published in 1906, there has been no recent comprehensive work on rural local government in this country. Professor James' book which emphasizes the county and its subdivisions meets, therefore, a real need among those interested in local institutions. The book should also attract attention because of its attempt to cover in a single volume all the units of local government, rural as well as urban.

Professor James commences his work with a sketch of the history and present status of local government in England and France, together with a brief account of the system of central control in these countries. In order to obtain the necessary background for our own system of local government the author next devoted a chapter to the origin and development of local institutions in the United States. The remainder of the book deals with the existing structure, functions, problems and recent tendencies of counties, townships, towns, villages, cities and other units of local government in this country.

The county is considered in two chapters which give a clear and full description of its organization and of what it actually does. In this part of the book county financial administration is condemned from nearly every point of view, and the belief is expressed that the remedy for this condition must be found in a wider application of state administrative control over such matters as accounting, indebtedness and the assessment of property for taxation. Professor James also brings out the general inefficiency of the average American county in the performance of such important functions as judicial administration, which has fallen into disrepute because of the popular election of county judges and prosecuting attorneys, the administration of penal institutions, which is regarded as the most uniformly unsatisfactory phase of county

government, poor relief and other services. Over some of these activities, as well as in the field of educational administration, public health and highways, the author notes that there has been a gradual tendency for the state to exercise an increasing amount of supervision and in some cases direct control.

Having considered the county as the basic unit of local government, the author next considers the rural and semi-urban areas smaller than the county. Following this, two chapters are devoted to the organization and functions of city government, the chapter on city activities being largely adapted from the author's work on *Municipal Functions* published in 1917. It is impossible to cover adequately such a broad field as city government in the space of one hundred and twenty-four pages, but Professor James' chapters furnish an outline of the subject which can be supplemented by students and others desirous of going further into the matter by reference to any one of the more complete treatises.

Under the chapter heading "Developments and Tendencies of the Past Decade" the author traces the most important tendencies in local government since 1910, with emphasis on the newer movements in county government. In this connection home rule for counties, state control, and county and city consolidation are discussed. The developments in city government during the same period are described under similar headings but much less space is given to them.

In conclusion, the author proposes the elimination of the township and other smaller non-urban areas because they lead to needless duplication and are ineffective and unnecessary. Theoretically he would also favor the abolition of the county and the transfer of its activities to the state or to new districts created by the state, on the ground that the county is not a natural or at present a convenient unit for the proper performance of most of its functions in the sense that the municipality is a natural unit of local government. Practically, however, the author regards this as too radical a step and suggests just the opposite, that the powers of the county be enlarged so as to develop a community spirit which will arouse the interest of its citizens and attract competent men to its offices. Professor James does not state, however, in what specific ways he would widen the powers of the county. Having conferred larger powers on the county, he recommends that such a development be accompanied by a corresponding increase in the efficiency of administrative machinery so as to bring at least the more populous counties up to the level of the best of our city governments. In the field of munic-

ipal government the new problems that arise grow largely out of those already in existence and do not seem to call for such fundamental readjustment as is indicated for rural local government.

The book is well arranged for text book purposes with a complete table of contents which outlines the subject matter in clear form, there is a list of the more important references at the beginning of each chapter and a concise summary at the end of each.

A. C. HANFORD.

*Harvard University.*

*American Police Systems.* By RAYMOND B. FOSDICK. (New York: The Century Company. 1920. Pp. 408. Publications of the Bureau of Social Hygiene.)

*American Police Administration.* A Handbook on Police Organization and Methods of Administration in American Cities. By ELMER D. GRAPER. (New York: The Macmillan Company. 1921. Pp. 357.)

Mr. Fosdick's volume is unquestionably the best of the few books which have been published on American municipal policing. It fills much the same place for American police departments as the author's *European Police Systems* does in the European field. It is not merely a volume of historical review and criticism, for it contains many constructive suggestions which all police officials will do well to study carefully.

The book first sketches the broader aspects of the American problem, then gives the historical background of American policing and takes up in detail police control, organization, leadership, recruiting, training, detective work and crime prevention. Each of these topics is treated in a manner which shows careful study in many cities instead of the more common intensive study of one city with occasional references to others. The dismal failure which most American cities have made and are making of police administration is set forth unsparingly, yet fairly. Despite the gloomy picture which the facts present, the author does not feel the situation is hopeless, especially when the real progress, which has been made, is recognized.

The fundamental importance of well-trained, courageous patrolmen is recognized by the author in his chapter on the rank and file, but, just as in his book, *European Police Systems*, one is apt to lose sight of this

fact while reading the other chapters—much as a layman loses sight of the fundamental part played by infantry in a modern army, while reading of the more spectacular functions of tanks, airplanes and generals. Aside from this point of emphasis, which from the nature of the subject it would be hard to counteract, the conclusions which the reader will draw from this book should be sound and helpful.

The literary style would be improved greatly in force and ease if much more of the supporting data were thrown into footnotes rather than incorporated in the text.

Students of municipal government will find this book of great assistance in a field of administration, the technical nature and importance of which are too often unappreciated.

Mr. Graper's book, the latest addition to the short list on American municipal police systems, is the most readable and convenient of them all. It is particularly suitable for those who desire to obtain a general knowledge of the principal methods of that important branch of administration without going over a mass of details. By generalizing as to the practice on any given point and liberal use of footnotes, the author has kept up the continuity of his text very well, considering the subject.

The only chapter which drags seriously is that on arrests, in which a poor attempt is made to present law from the policeman's viewpoint. The author concludes that state control of police is not growing. He is correct as to the old methods of state control, but seems to miss the significance of the rapid growth of effective state constabulary forces in relation to the policing of small communities, particularly as mobile reserves in emergencies and for the development of expert detective services. The discussion on methods of training both uniformed and detective police is well done and covers one of the weakest features of our American police departments. The chapter on the subject of compensation and welfare is much less a mechanical statement of facts than is usually the case and is interesting as it contains the first discussion, in a book of this sort, on the movement to organize labor unions in police departments.

As a whole the book is accurate, but in discussing the police strike in Boston, a bad matter is put in a far worse light than it really was. The number of strikers was actually 1147, instead of 1500; out of a force of about 1800 in all ranks; the city was never under martial law; and although the federal authorities took preliminary measures in order to be ready to intervene, they never were called upon to do so. The

serious disorder and looting were confined to less than twenty-four hours instead of three days. The conclusions which the author draws from the results of this unfortunate incident, however, seem to be sound.

GEORGE H. McCaffrey.

*Boston, Mass.*

#### BRIEFER NOTICES

*Russia from the American Embassy* (Charles Scribner's Sons, pp. ix, 136) by David R. Francis, Ambassador to Russia during the eventful years from 1916 to 1918, stands out as the most authoritative and the least sensational of the books so far published on the subject. This does not mean that the book is lacking in interest, for it is written with a directness and vigor which hold the attention of the reader from beginning to end. The volume is made up largely of Ambassador Francis' dispatches and public letters together with explanations, comments and descriptions of important persons and events which serve to join the whole into a continuous narrative. Vivid pen pictures are given of such men as Kerensky, Lenin, and others with whom the author came into contact in the performance of his official duties. The author is of the opinion that the provisional government under Kerensky showed great weakness in its leniency toward the radical leaders at the time of the so-called July Revolution. In this connection he says: "Had the Provisional Government at this time arraigned the . . . Bolshevik leaders, tried them for treason and executed them, Russia would probably not have been compelled to go through another revolution, would have been spared the reign of terror, and the loss from famine and murder of millions of her sons and daughters" (p. 141). In concluding the account of his experiences and observations, Ambassador Francis expresses the decided belief that armed intervention by the United States and the Allied Powers following the Armistice would have given courage to the majority of the Russian people who were opposed to Bolshevism, and he makes a special plea against the present attitude of those who advocate leaving Russia "to stew in her own juice." In his opinion the United States should take the leadership in saving Russia and preventing the spread of Bolshevism by acting in coöperation with other countries through the League of Nations. The reader leaves the book with a feeling of admiration for the courage and ability with which Ambassador Francis steered his course through rapidly changing waters.

Perhaps no other book brought out within the last few months has given rise to more discussion in American political circles than *The Mirrors of Washington* (pp. 256) published anonymously by Messrs. G. P. Putnam's Sons. The author has singled out fourteen American public men and has analyzed the personality of each in a most unconventional and daring manner which in many instances is caustic and in some few almost bitter. Among the men who are "mirrored" are such well-known personages as President Harding, Ex-president Wilson, Secretary of State Hughes, Herbert Hoover, Ex-senator Root and Senators Lodge, Hiram Johnson, Knox, Penrose and Borah, all of whom have had their eye on the presidency or have attained that honor. The general method of attack has been to work out for each of the satiric portrayals a sentence or brief epigram which will sum up what the author regards as the frailties of the individual under consideration. In some cases the choice has been fortunate; in others a somewhat distorted characterization has been given in striving to bring out the sensational. Altogether it is an exceedingly clever piece of work, evidently written by an experienced journalist, and does present some degree of pungent truth in regard to the figures with which it deals, although it can hardly be said to be as well balanced and as true to life as *The Mirrors of Downing Street* of which it is an obvious imitation.

The progress of English democracy during the past third of a century is vividly described by Homer Lawrence Morris in a monograph on *Parliamentary Franchise Reform in England from 1885 to 1918* published as one of the latest of the Columbia University Studies in History, Economics and Public Law (Longmans, Green and Company, pp. 208). Chief consideration is given to the movements for the abolition of plural voting and the extension of parliamentary franchise to women. Over a third of the study is devoted to the Representation of the People Act of 1918 which removed a host of previously existing irregularities, provided a redistribution of seats for England, swept away a complicated maze of obstructive laws, granted suffrage to women and increased the register of parliamentary voters to almost half of the total population.

Ferdinand Schevill of Chicago University has revised his text-book, *A Political History of Modern Europe* (Harcourt, Brace and Company, pp. xiv, 663) which was originally published in 1907. Three new chapters have been added covering the character of European civilization at the beginning of the twentieth century, European diplomatic relations



from 1871 to 1914, and the facts concerning the war and the peace. Like the older portions of the work these new chapters are written in a clear and lucid manner and are easily assimilated. An interesting feature of the material from the standpoint of the student of political science is the special attention given to political developments. It is regretted, however, that the author has not revised the general bibliography at the end of the volume as there have been at least a few books of importance to the subject which have appeared since 1907.

A very useful volume on *Europe Since 1870* by Professor E. R. Turner of the University of Michigan has been issued by Messrs. Doubleday, Page and Company (pp. 580). This book is based on the second part of the author's *Europe 1789-1920*, but considerable additions have been made because of the opportunity for more detail and some portions are entirely new. The student of political science is impressed particularly by the emphasis upon governmental organization and developments in the different European countries, by the author's impartial attitude toward controversial matters, and by his readable style. As in the case of the earlier work on *Europe 1789-1920* the bibliographies at the end of each chapter are most helpful and there are a number of excellent maps.

*The Law of the Sea*, by George L. Canfield and George W. Dalzell, admiralty lawyers, has been published by D. Appleton and Company. This is the third volume of the series of manuals on training for the merchant marine projected jointly by the United States Shipping Board and the Federal Board for Vocational Education. The book presents the chief facts and principles in regard to the legal relations, rights, duties and obligations of ship owners, operators and seamen and the legal problems connected with the ownership of a vessel from the contract for its construction to sale and salvage. A summary of the navigation laws of the United States, the text of the Merchant Marine Act of 1920, and a table of cases cited in the text greatly enhance the usefulness of the book. This treatise should prove very helpful to owners or masters of vessels as well as to the student who may wish to acquire information concerning the main facts and principles of maritime law without attempting to acquire such a mastery of the subject as is possessed by an admiralty lawyer.

An English edition of *Le Déclin de l'Europe* by A. Demangeon, Professor of Geography at the Sorbonne, has been brought out by Messrs.

Doubleday, Page and Company under the title of *America and the Race for World Dominion* (pp. xiv, 234). This book as originally published in France has attracted considerable interest on the continent. Professor Demangeon's main theme is that an economic evolution is now in progress, due largely to the war, which will eventually lead to the shifting of leadership and domination in the financial and industrial world from the older countries of Europe to the peoples of America and Japan. "Depopulated and impoverished," questions the author "will Europe be likely to hold the economic ties that have been the foundation of her wealth? Will she continue to be the great bank furnishing the capital to new lands? . . . Will the equipment that transports from sea to sea the men and the products of the earth remain in her hands?" (p. xii) The forecasts and conclusions are based upon a very careful study and analysis of comparative economic data concerning the finances, sea power, and industry of the various countries, but the reader can scarcely refrain from feeling that the author has painted the picture darker than it really is.

*The World in Revolt: A Psychological Study of Our Times* (The Macmillan Company, pp. 256) by Dr. Gustave Le Bon, the well-known psychologist, and translated by Bernard Miall, is another work by a French writer which has been made easily accessible to American readers. The sub-title describes more accurately the character of this work, the main theme of which is found in the author's introductory statement that: "Psychological forces, in which moral activities are included, . . . rule over all the departments of national life and determine the destinies of people" (p. 3). Dr. Le Bon then proceeds to explain from a psychological point of view the causes and results of the World War and of the disturbances which have followed in its train, especially in Russia, Germany, and Austria. His conclusion is that "the only effective safeguard that any nation can possess is its social structure. Directly this fabric is shaken as a result of violent happenings, men lose the guiding principles which are needed for the orientation of their thoughts and actions" (p. 255). The individual traits most essential to the maintenance of the social structure and well being of a nation are listed by the author as solidarity, initiative, accuracy and continuity of action—aptitudes of character rather than of intellect.

In *The Problem of Foreign Policy* (Houghton Mifflin Company, pp. 126) Sir Gilbert Murray has sought to revivify faith in Victorian liberalism through pointing the ideals of that faith by war and post war experience. His attitude toward the Treaty of Versailles is critical but less violent than Keynes. The League he considers the redeeming feature. The British habit of self criticism is apparent in the caustic comments on Lloyd George's post armistice campaign (p. xii). The United States is dealt with amiably but an underlying feeling of European liberals is evidenced by the reference to "the greatest and the least wounded of all the nations" which refuses to join in an organization for peace "but sits aloof in silence, from time to time sharpening her sword" (p. xxviii).

A biography of Cecil Rhodes by Basil Williams has come from the press of Messrs. Henry Holt and Company (353 pp.). After a few rather brief chapters on the early career of Mr. Rhodes the book plunges into the South African environment and stays there to the end. The plans and achievements of the empire-builder are narrated fully and vividly so that the volume is not only the biography of a great imperial figure but a chronicle of South African history during well nigh a quarter of a century. Mr. Williams is an appreciative biographer; but he finds Mr. Rhodes a "faulty hero" in some essentials and the book in consequence is not exactly what one might call a manual of devotion. There is an exhaustive bibliography and useful map.

The Yale University Press is issuing a series of six handsome volumes under the general title *How America went to War*, by Benedict Crowell and Robert Forrest Wilson. Two of these volumes entitled *The Road to France* were noticed in a previous number of the Review. The third volume in order of publication (but the first in chronological order) is called *The Giant Hand* (191 pp.). It deals with the mobilization and control of American industry and natural resources during the years 1917-18, and particularly with such topics as priority, the war industries board, price fixing, allied purchasing, and the mobilization of commodities (nitrates, dyes, chemicals, etc.). The narrative is fresh and interesting, with no dead-weight of statistics upon it, and plays up in a graphic way the personalities of the men who did the work. The illustrations (and there are nearly a hundred of them) could hardly be better. They drive home the whole story in an effective way.

E. P. Dutton and Company have published *Out of Their Own Mouths. A Revelation and Indictment of Sovietism*, by Samuel Gompers with the collaboration of William English Walling (pp. xx, 265). This is more an indictment than a revelation of Sovietism. The indictment is intended to destroy whatever remains of one of Soviet Russia's chief political assets, the belief that it is a workingmen's government, and to combat the movement in favor of trade or diplomatic relations with Soviet Russia by overturning the theory that the "anti-labor despotism" is changed in essentials by Lenin's compromises and reforms.

*The Economics of Communism with special reference to Russia's Experiment* (The Macmillan Company, pp. xvi, 312), by Mr. Leo Pasvolosky, is a dispassionate and systematic account of the soviet economic system and "its fundamental economic dilemma: Communism or Production?" Its excellent arrangement enables the reader to understand readily the complicated subject matter; its calmness in tone and abundant citation of official information bring conviction.

*Democracy and the Japanese Government* is the subject of a short book by Dr. Hiroshi Sato, published by the Columbia University Bookstore (pp. vi, 97). The author is of the opinion that the institution which more than anything else retards the development of constitutional government in Japan is the "Genro" or elder statesmen, an extra-legal body which has acquired by custom the enormous power to form, advise and overthrow cabinets. The history of the suffrage in Japan and the chapter on municipal government are of particular interest since they give new light on subjects which have hitherto received little attention. The emphasis of the book is on the actual workings of the government, not its organization.

Another study of Japanese government which has recently made its appearance is *The Working Forces in Japanese Politics* by Uichi Iwaski, Professor of Sociology in Kwansai University, published as one of the Columbia University Studies in History, Economics and Public Law. (Longmans, Green and Company, pp. 141.) This volume contains a brief account of the political conflicts in Japan from 1867 to 1920, showing the interplay in politics of the various forces such as the elder statesmen, the peers of the upper house, the bureaucrats and the militarists. Each of these has taken its turn in being at the top. In the opinion of the author it is now "the turn of the political parties, in alliance with capital" to control Japanese affairs.

Some eighteen of President Harding's speeches delivered to various groups of people on different occasions have been gathered together in a book entitled *Our Common Country* edited by Frederick E. Schortemeier (The Bobbs-Merrill Company, pp. 302). Most of the addresses collected here are of a general nature, but some few touch upon political and governmental problems such as those on business and government, the press and the public, conservation and development, social justice, and the federal constitution. Practically all of the speeches that have been chosen make a special plea for the coöperation of every citizen in advancing the interests and welfare of his country.

*United States Citizenship*, by George Preston Mains (The Abingdon Press, pp. 296), discusses the relations of the citizen to his government with emphasis on the importance of an intelligent and loyal suffrage. Chapter headings such as "The Lineage of Democracy," "Constitutional Citizenship," "National Obligations to Immigrant Citizenship," "The Press" and "Menaces" give some idea of the nature of the work which is written especially for young readers and is rather general and idealistic in character.

The League of Women Voters of Cleveland has brought out a small booklet entitled *Parties, Politics and People* (pp. 118) containing four lectures delivered before the League by Raymond Moley. The lectures endeavor to show the workings of constitutional government through political parties and cover such topics as the history of American political parties, national parties today, local party organizations and training for popular government. The material is presented in a clear and interesting manner and should prove very helpful in classes on citizenship and politics.

The proceedings of the Third National Country Life Conference for 1920 have been published by the University of Chicago Press under the title of *Rural Organization* (pp. vii, 242). Most of the papers included in this volume have to do with the country life movement, rural community organization, country planning and the reports of various committees, but there are some half dozen articles of interest to students of government. These cover such matters as recent legislation facilitating rural community organization and recent tendencies in rural government and legislation.

*Dominion Home Rule in Practice* (pp. 63) by A. Berriedale Keith of the University of Edinburgh is one of the most recent titles in "The World of Today" series of booklets on current problems and events published by the Oxford University Press under the general editorship of Victor Gollancz. The book is wholly descriptive in character, explaining in an accurate, concise and interesting manner what self government actually means in Canada, Australia, New Zealand, South Africa and Newfoundland and outlining the laws and customs which regulate the relations of the dominions to the mother country.

In a small book entitled *Simon Bolívar* (published by the author, Washington, D. C., pp. 233) Guillermo A. Sherwell has traced the career of the great South American liberator. The author's aim as expressed in the introduction is to make the reader understand and appreciate how unusual a man Bolívar was, and he has accomplished his purpose, for the work is an interesting and readable piece of hero worship.

## RECENT PUBLICATIONS OF POLITICAL INTEREST

### BOOKS AND PERIODICALS

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#### AMERICAN GOVERNMENT AND PUBLIC LAW

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———. Some aspects of the farmers' problems. *Bernard M. Baruch*. *Aplan. M.* July, 1921.

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———. The American diplomatic service. *Herbert W. Horwill*. *Fort. Rev.* Aug., 1921.

**Education.** The educational function of the national government. *Henry Barrett Learned*. *Am. Pol. Sci. Rev.* Aug., 1921.

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